CANADA

National Energy Board

Reasons for Decision

Proposed Changes to the Application of the Market-Based Procedure

GHW-1-91

May 1992

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Cat. No. NE22-1/1992-6E
ISBN 0-662-19721-6

This report is published separately
in both official languages.

Copies are available on request from:

Regulatory Support Office
National Energy Board
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Printed in Canada

Ce rapport est publié séparément
dans les deux langues officielles.

Exemplaires disponibles auprès du:

Bureau du soutien de la réglementation
Office national de l'énergie
311, 6e avenue s.-o.
Calgary (Alberta)
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Imprimé au Canada

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Recital and Submittors

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the regulations made thereunder; and

IN THE MATTER OF proposed changes to the application of the Market-Based Procedure, considered by way of written submissions in proceeding GHW-1-91.

BEFORE:

R. Priddle	Chairman
J.-G. Fredette	Vice Chairman
R.B. Horner, Q.C.	Member
A.B. Gilmour	Member
A. Coté-Verhaaf	Member
C. Bélanger	Member
R. Illing	Member
K.W. Vollman	Member

SUBMITTORS

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Alberta Petroleum Marketing Commission
BC Gas Inc.
Brymore Energy Ltd.
Canadian Chemical Producers' Association
Canadian Petroleum Association
CanWest Gas Supply Inc.
Centra Gas (Ontario) Inc.
Cities of Burbank, Glendale and Pasadena
Consumers' Gas Company Ltd.
Deputy Minister of Energy and Mines, Manitoba
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Foothills Pipe Lines Ltd.
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Independent Petroleum Association of Canada
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Ministry of Energy for Ontario
Ministry of Energy, Mines and Petroleum Resources, British Columbia
Mobil Oil Canada
Natural Gas Pipeline Company of America

New York State Electric & Gas Corporation
North Canadian Marketing Inc.
Pacific Gas Transmission Company
Pan-Alberta Gas Ltd.
Paramount Resources Ltd.
Poco Petroleums Ltd.
Procureur général du Québec
ProGas Limited
San Diego Gas and Electric Company
Saskatchewan Oil and Gas Corporation
Selkirk Cogen Partners II
Southern California Edison Company
Speak-Up for Wildlife Foundation
Union Gas Limited
Vermont Gas Systems, Inc.
Westcoast Energy Inc.
Western Gas Marketing Limited
Wolf, R.E.

Chapter 1

Background

In July 1987, pursuant to a "Review of Natural Gas Surplus Determination Procedures" (hearing "GHR-1-87"), the National Energy Board ("the Board") implemented a new procedure, known as the Market-Based Procedure ("MBP"), by which it discharges its responsibilities under section 118 of the *National Energy Board Act* ("the Act") with respect to the licensing of natural gas exports. The MBP sets out the procedure by which the Board assesses the merits of applications to obtain a licence for the long-term export of natural gas from Canada.

In the GHR-1-87 Decision, the Board stated that the public hearing component of the MBP would consist of three parts: a Complaints Procedure, an Export Impact Assessment (the "EIA"), and a Public Interest Determination. The Board notes that, in making this distinction, the Board intended that the Public Interest Determination would consist of an assessment of all those public interest considerations ***other*** than those addressed by the Complaints Procedure and the EIA. Therefore, in these Reasons this component of the MBP is referred to as the Other Public Interest Considerations.

The Board has twice adapted the MBP in response to the evolution of natural gas markets.

- In November 1989, the Board issued an amendment to the EIA filing requirements. This amendment allowed licence applicants to either submit their own EIA, as had been required until that time, or to adopt the most recent EIA prepared by the Board, in order to satisfy the requirement that evidence be submitted on the likely impact of the proposed export on Canadian energy markets.

- In March 1990, the Board conducted a "Review of Certain Aspects of the Market-Based Procedure." Pursuant to this review, the Board eliminated the use of benefit-cost analysis in its assessment of the merits of export licence applications. It also changed the way in which it ensures that export contracts fulfill the criterion contained in clause 18 (iii) of the Agreement Among The Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices ("the 1985 Natural Gas Agreement"), ie. that "export contracts must contain provisions which permit adjustments to reflect changing market conditions over the life of the contract."

In the context of a number of hearings on gas export licence applications over the past few years, a number of parties have raised questions and concerns about the intent and operation of the Complaints Procedure. Further, in the GH-5-89 hearing, some parties specifically requested clarification of the role of the Other Public Interest Considerations component of the Board's export licensing procedures. Accordingly, as part of its ongoing effort to maintain and improve the clarity and effectiveness of the regulatory process, the Board decided to internally re-assess the manner in which it applies these two components of the MBP, and to then seek the views of interested parties on its proposed modifications. On 14 August 1991, the Board released a letter to all interested parties in which it proposed certain changes to the application of the Complaints Procedure and the Other Public Interest Considerations (see Appendix 1) and invited parties to submit comments on these proposals.

The Board notes that the MBP incorporates the Government of Canada's policy in regard to the conditions exporters of natural gas must meet for gas exported under licence, as set out in clause 18 of the 1985 Natural Gas Agreement. Accordingly, prior to announcing its proposed changes to the application of the MBP, the Board wrote to the Minister of Energy, Mines and Resources, the Honourable Jake Epp ("the Minister") requesting his concurrence that the Board proceed with its proposed changes to those aspects of the MBP which reflect the Government of Canada's policy. On 7 August 1991, the Minister wrote back to the Board, indicating his concurrence with the Board's intentions (these letters are contained in Appendix 1 as part of the attachments to the Board's 14 August 1991 letter). The Board noted in its letter to the Minister that, with respect to those proposed changes which relate directly to the Government of Canada's export pricing policy, it would refer its final recommendations to the Minister.

The Board also included in its 14 August 1991 letter to interested parties some proposed changes to the pre-hearing process for export licence applications and proposed new information filing requirements for gas export licence applicants. The Board did not propose any changes to the Export Impact Assessment component of the MBP.

Chapter 2 summarizes the views of submittors on the Board's proposals and sets out the Board's Reasons for Decision on the proposed changes to the application of the Market-Based Procedure. It also includes a statement on the changes the Board will make to the pre-hearing procedure. For the convenience of all interested parties, Chapter 3 provides a summary restatement of the manner in which the Board will apply the public hearing component of the MBP. A number of parties submitted comments which were outside the scope of the proposed changes contemplated by the Board at this time including, for example, proposals for changes to the EIA process. Although the Board is not commenting on these submissions in these Reasons, a summary of these submissions is provided in Appendix 2.

With the exception of one part of the proposed changes to the information filing requirements for gas export licence applicants which is specifically related to the Complaints Procedure, the new filing requirements are not addressed in these Reasons. These changes form part of the Board's overall review of the *National Energy Board Part VI Regulations* ("the Part VI Regulations"). The Board will report on the changes to the information filing requirements for gas export licence applicants at the same time it reports on the changes to be implemented for the entire Part VI Regulations. However, in the interim, the Board intends to operate using the Information Filing Requirements as set out in Attachment E to its 14 August letter (see Appendix 1).

Chapter 2

Proposed Changes to the Application of the Market-Based Procedure

In its 14 August 1991 letter to interested parties, the Board provided:

1) a clarification of the intent of the Complaints Procedure;

2) proposed changes to aspects of the pre-hearing process and information filing requirements related to the Complaints Procedure; and

3) some proposed changes to the Other Public Interest Considerations.

The views of submittors and the views of the Board on each of these topics is addressed in turn below.

2.1 Complaints Procedure

In its 14 August letter (Attachment C) to interested parties, the Board made the following clarification of the manner in which it intends to apply the Complaints Procedure.

> "...the Complaints Procedure is one way in which the Board tests whether the market is working to satisfy Canadian requirements for natural gas at fair market prices.
>
> "The Board wishes to clarify that the basic premise of the Complaints Procedure is that, in a market which is working satisfactorily, Canadian purchasers will be able to obtain domestic natural gas supplies on terms and conditions similar to those offered to U.S. purchasers. In order to test whether the market is in fact working in this manner, in the GHR-1-87 Decision the Board stated that:
>
> > "The inclusion of a complaints mechanism in the new surplus determination procedures is based on the principle that gas should not be authorized for export if Canadian users have not had an opportunity to buy gas for their needs on terms and conditions similar to those of the proposed export. Applicants for export licences will have to be prepared to address any concerns on this score which may be identified in the complaints procedure..."
>
> "The Complaints Procedure seeks to ensure that Canadian gas buyers who have been active in the market will have access to gas on terms and conditions no less favourable than export customers. The Complaints Procedure will enable these buyers to assess the terms and conditions of the gas sales contracts underlying export licence applications relative to the terms and conditions they are being offered. If the terms and conditions being offered to export customers were more favourable than those available to domestic

customers, a Canadian buyer may wish to file a complaint with the Board. The Board will adjudicate each complaint on the basis of an assessment of whether, as a matter of fact, the complainant was or was not able to obtain additional gas supplies on terms and conditions similar to those contained in the gas export licence application submitted to the Board.

"Domestic gas purchasers who wish to file a complaint will have to demonstrate that they had attempted to contract for additional gas supplies and that they were not able to obtain such supplies on terms and conditions similar to those contained in the export sales contract. At the same time, export licence applicants will be expected to respond to the concerns expressed by a complainant. If the Board were to find that a complaint were valid, it would then have to determine what action need be taken to remedy the situation. This could involve a delay to the licence proceeding, a denial of the export licence application or some other action appropriate to the circumstances of the particular application."

The views of submittors and the views of the Board on the above statement are provided below.

2.1.1 Views of Submittors

A range of parties representing each sector of the natural gas industry supported the Board's statement concerning the application of the Complaints Procedure. These parties included the Alberta Petroleum Marketing Commission (the "APMC") acting on behalf of the Province of Alberta, BC Gas Inc., the Ministry of Energy, Mines and Petroleum Resources for the Province of British Columbia ("British Columbia"), Pan-Alberta Gas Ltd. ("Pan-Alberta"), Saskatchewan Oil and Gas Corporation ("SaskOil"), Gaz Métropolitain inc., and Vermont Gas Systems, Inc. ("Vermont Gas"). Most of these parties recognized that, in order to fulfill its mandate under section 118 of the Act, the Board is required to test whether proposed gas exports are surplus to the reasonably foreseeable needs of Canadians. These parties indicated that the Complaints Procedure is a reasonable way of making this test, while at the same time minimizing interference in the workings of a competitive gas market. Some of these parties also stated that the Complaints Procedure is a reasonable method of balancing the interests of Canadian gas producers and consumers in the context of the current market-oriented environment.

A number of gas producing interests argued that the Complaints Procedure places too great a burden on gas exporters and suggested modifications which would place a larger share of the burden of proof on potential complainants. Paramount Resources Ltd. ("Paramount") suggested that domestic gas buyers who lodge a complaint should be required to file with the Board full and complete details of the nature of their gas requirements to enable the producing industry at large, as well as the licence applicant, to respond to the needs of the buyer. Paramount also suggested that the Complaints Procedure be limited to core market gas purchasers.

ProGas Limited ("ProGas") suggested that complainants should be required to file a summary of the terms and conditions pursuant to which the complainant had been able to buy gas during the two-year period prior to the filing of a complaint. ProGas argued that this would help the Board and other interested parties determine whether a complaint is valid.

On the other hand, a number of parties representing gas consuming interests argued that the Complaints Procedure needs to be modified in order to better ensure that the interests of gas purchasers are adequately protected.

The Procureur Général for the Province of Québec (Québec) argued that provincial governments should be permitted to file complaints on behalf of core market gas users in their jurisdictions. It also argued that each licence applicant should be required to file a record of the negotiation process which took place between itself and potential domestic buyers prior to commencement of the public hearing on its application.

The Ministry of Energy for the Province of Ontario ("Ontario") suggested that the Board should define what "similar terms and conditions" means for each component of a gas sales contract including, for example, terms such as minimum take provisions, contract-out clauses, contract volumes, etc.

2.1.2 Views of the Board

The Board is of the view that the Complaints Procedure is a reasonable method for it to fulfill its obligations under section 118 of the Act to ensure that proposed gas exports are surplus to foreseeable Canadian requirements, having regard for trends in the discovery of gas. The Board is of the view that the Complaints Procedure is an important component of the way in which it satisfies this mandate, while minimizing interference with the workings of a competitive market.

With respect to the suggestions regarding the Complaints Procedure process, the Board does not agree with Paramount's suggestion that domestic gas buyers who lodge a complaint should be required to file full and complete details of the nature of their gas purchasing requirements at the public hearing. Similarly, the Board does not agree with ProGas's suggestion that complainants should be required to file a summary of the terms and conditions pursuant to which the complainant had been able to buy gas during the two year period prior to the complaint being filed. Each complainant will, however, be required to file information to support its case that it has not been able to purchase gas on terms and conditions similar to those contained in the subject gas export sales contract.

The Board also disagrees with Paramount's suggestion that the Complaints Procedure be limited to core market gas buyers. The Board notes that most industrial gas buyers currently purchase gas on a short-term basis and, hence, are unlikely to be in a position to file a complaint about a long-term gas export licence application. However, some industrial gas users, such as cogeneration plants, may purchase gas on a long-term basis. Any purchaser who buys gas on a long-term basis should be allowed to file a complaint if it believes that it has not been able to purchase gas on terms and conditions similar to those contained in a gas export sales contract.

The Board disagrees with Québec's suggestion that licence applicants should be required to file a record of the negotiation process which took place between themselves and potential domestic buyers. In the event that a complaint were filed, and assuming that the licence applicant wished to argue that gas had been offered to the complainant on terms and conditions similar to those contained in the export sales contract, it would be required to file evidence to this effect. However, this information will not always be required and, in instances where it is required, the onus will be on the licence applicant to file whatever evidence it believes is necessary to support its position. It would not be desirable to prescribe in advance exactly what information must be filed by licence applicants in the event a complaint is filed.

The Board also disagrees with Ontario's recommendation that it define for each term of a gas sales contract what is meant by "similar terms and conditions." The nature of gas sales contracts in today's market is such that it is very unlikely that two contracts will contain exactly the same terms and conditions. For example, there are a variety of methods by which contracting parties

may include an incentive in a sales contract for a gas purchaser to take gas at a high load factor. These methods may include minimum take clauses, reduced prices on higher levels of take, and penalties for failure to take, to cite a few examples. The range of options available to contracting parties is so great that it would be a difficult task to anticipate all possible contractual means for effecting a contract goal. Further, the Board must retain some freedom of scope for determining whether contractual terms are effectively similar, even though they may not be identical. Any attempts to precisely define what constitutes similar terms and conditions would only serve to constrain the Board's ability to interpret somewhat differing terms to be effectively similar. In summary, it is the Board's view that a determination of what constitutes a similar term or condition will inevitably require an element of judgement, and is best determined on a case by case basis in the context of each particular licence application.

Finally, with respect to Québec's suggestion that provincial governments be permitted to file complaints on behalf of core market gas users in their jurisdictions, the Board notes that the Complaints Procedure is based on the idea that gas purchasers should demonstrate that they had attempted to contract for additional supplies on terms and conditions similar to those contained in the subject gas export licence application but were unable to do so. However, at the same time, the Board notes that any party who believes it has information which is relevant to the determination of surplus or any aspect of the Canadian public interest in relation to a gas export licence application is free to submit such evidence to the Board.

2.2 Pre-hearing Process

In its 14 August 1991 letter to all interested parties, the Board noted that some parties have recently argued that the time available between the date they receive notice of a public hearing and the commencement of the hearing is insufficient to determine whether they have grounds for a complaint. Accordingly, the Board proposed that the following changes be adopted for all future Part VI licence applications.

1) Licence applicants would henceforth be required to file a contract summary with their application which would summarize key contractual information, including an explanation of the contractual price determination mechanism.

2) Licence applicants would be required to file the name of a contact person to whom questions about the details of the contract could be directed and the name of this person would be included in the Board's press release on the application.

3) The Board would, except in unusual circumstances, provide for a 60-day period between the date at which a hearing is announced and the start date of the hearing.

The views of submittors and the views of the Board on the above proposals are provided below.

2.2.1 Views of Submittors

Most parties who represent domestic gas consumers, including Ontario and Québec, supported the Board's proposal with respect to the filing of a contract summary. Union Gas Limited ("Union") stated that, although a summary would be helpful, applicants should still be required to file a complete copy of the sales contract. CentraGas (Ontario) Inc. ("Centra"), Ontario, and the APMC each suggested that the Board establish a standard format for the filing of such contract summaries.

A number of producing interests, including the Canadian Petroleum Association ("the CPA"), Husky Oil ("Husky") and Paramount, opposed the filing of such summaries. Poco Petroleums Ltd. ("Poco"), British Columbia and the Independent Petroleum Association of Canada ("IPAC") argued that a summary can be misleading and that the Board should retain its current practice of requiring the entire sales contract to be filed.

Most parties who represented domestic gas consuming interests supported the Board's proposal to require export licence applicants to include the name of a contact person in their applications along with Board publication of the name of this contact person in the press release announcing receipt of the application.

There was little comment on this proposal from producing interests and no strong objections were submitted. Vermont Gas suggested that the press release be made available to U.S. parties as well as to Canadian parties.

Most parties who represented domestic gas consuming interests supported the Board's proposal to provide for a 60-day period between the date a licence hearing is announced and the actual start date of the hearing. A few of these parties noted that 60 days should normally provide sufficient notice for them to determine whether they believe they have grounds for a complaint.

A number of producer representatives stated that they understood the need for adequate notice, but they were concerned that in some instances a 60-day period could result in undue delay in hearing an application. ProGas argued that the filing of the name of a contact person with the press release and a contract summary should help domestic consumers to examine the terms of a proposed export at an early date and, therefore, reduces the need for a lengthy period between the time the Board sets an application down for hearing and the start date of the hearing. IPAC argued that the Board should exercise flexibility in this regard and the Pacific Gas Transmission Company ("PGT") argued that 30 days should be sufficient. In summary, producing interests, including the APMC, argued that 60 days is an unreasonably long period to provide in all instances.

2.2.2 Views of the Board

The Board's proposal to require licence applicants to file a summary of the contractual terms and conditions of the export sales arrangement, including a summary of the pricing provisions, will improve the speed and quality of the information flow prior to the commencement of a hearing and could thereby help contribute to less time spent at hearings in cross-examination over contractual matters. These summaries should permit domestic gas buyers to more quickly assess the terms and conditions included in a gas export sales contract and help them come to a timely decision as to whether they believe that there are grounds for a complaint. In turn, this will help expedite the entire hearing process and should be beneficial to both licence applicants and domestic gas consumers. The Board recognizes, however, that the contract summaries will not be able to entirely act as a substitute for the complete gas sales contract and that, in order for a licence application to be properly evaluated, parties will continue to require access to the complete sales contracts. In summary, the Board will implement its proposal to require licence applicants to file a summary of the contractual terms of the export sales arrangement, including a summary of the pricing provisions, as part of their export licence applications. The Board notes, however, that licence applicants will continue to be required to file complete export sales contracts.

The Board also agrees with those parties who suggested that a standard format be designed for the contract summaries. A standard format will ensure that contract summaries filed by applicants can be directly compared to one another. The Board's recommended format for filing a contract summary is attached as Appendix 3.

The Board will also implement its proposal that licence applicants be required to submit the name of a contact person from whom details about the proposed export can be obtained and that the name of this contact person (along with address, telephone number and fax number) would be included in the Board's press release announcing receipt of the application. This action will provide interested parties with an opportunity to fully inform themselves about the details of proposed exports prior to the commencement of a public hearing. This should aid domestic gas buyers to determine at an early stage whether they believe they have grounds for filing a complaint in relation to the application.

The Board has decided not to implement its proposal to provide for a 60-day period between the date an export hearing is announced and the date of commencement of the hearing. The Board agrees with those parties who argued that implementation of the other proposed changes to the pre-hearing process will obviate the need for provision of a 60-day interval in many cases. The appropriate interval between announcement and commencement of a hearing will vary according to the circumstances of particular applications. In some cases, a 60-day interval may not be necessary whereas in others it may be appropriate to provide more than 60 days. Therefore, the Board has decided to remain flexible in this regard and will set hearing dates which appear to it to be fair, based on the circumstances of each application.

2.3 Application of the Other Public Interest Considerations

The 1985 Natural Gas Agreement was intended to create the conditions for a more flexible and market-oriented regime for the pricing of natural gas sold in both domestic and export markets. Among other things, it provided for the elimination of certain tests that had been applied to export sales (the "incrementality test" and the "competing fuels test"). In place of these tests, the 1985 Natural Gas Agreement included five criteria against which exporters' negotiated contractual arrangements were to be assessed. These five criteria were: (i) a requirement that the contractual arrangements provide for full recovery of Canadian transportation costs; (ii) that the price of the exported gas not be less than the price charged to Canadians for similar types of service in the zone adjacent to the export; (iii) that export contracts contain flexible pricing terms; (iv) that the export contracts provide for assurance of takes; and (v) that export arrangements have the support of the producers supplying the gas.

The Board ensures that its regulation of natural gas exports takes account of the Government of Canada's policy criteria with respect to gas exports. The Board has had regard to these criteria, along with other matters relevant to the public interest, as part of the Other Public Interest Considerations component of the MBP.

In 1986, criterion (ii) was replaced by a system of monitoring the prices of actual transactions. Since that time the Board has assessed export proposals against the remaining four criteria. However, in making its assessments, the Board has developed its own methods by which it ensures that these criteria are satisfied. As a result, the Board's review of an export arrangement currently includes an assessment of the following considerations: evidence that the associated transportation costs in Canada will be recovered; evidence that the export sales contract will be durable over the life of the contract and that it was negotiated at arm's-length; evidence that there

are adequate assurances in the sales contract that gas will be taken; and evidence of producer support for the licence application.

Attachment D to the Board's letter of 14 August 1991 dealt with the proposed application of the Other Public Interest Considerations component of the MBP and specifically requested comments on the Board's proposals to no longer have regard to certain considerations in its review of a Part VI export licence application. These proposals were that the Board would:

- no longer make an assessment of the likelihood that contracted volumes will be taken;
- no longer make an assessment of the durability of export sales contracts; and
- no longer have regard to whether or not export sales contracts were negotiated at arm's-length.

In addition to the above, the Board requested comments on the continued use of the following criteria, but indicated that it intended to retain them given the Minister's stated preference that they continue to apply:

- verification that there is producer support for a gas export application; and
- verification that there are provisions in the export sales contracts for the payment of the associated transportation charges on Canadian pipelines over the term of the export sales contract.

The Board also asked parties to provide comments on the use of various criteria to determine whether the length of a requested licence term, pursuant to a Part VI application for a long-term export licence, were appropriate. In this regard, the Board proposed that in making its assessment of the appropriate length of term for an export licence, it would have regard to:

(i) evidence on the adequacy of the gas supplies available to the export licence applicant to support the applied-for volumes over the requested licence term;

(ii) evidence on the necessity of the requested term in light of the terms of the associated gas sales and transportation contracts and the terms of the approvals from other regulatory bodies; and

(iii) any other evidence which the Board deems to be relevant to the appropriate term of the licence.

Attachment D to the Board's 14 August 1991 letter included a summary table of proposed changes to the "Other Public Interest Considerations" component of the MBP (see Appendix 1). There were three items contained in this table, the "demonstration of commercial substance, the status of removal permits, and the availability of pipeline space," which are not explicitly addressed by the above-listed Other Public Interest Considerations. The Board notes that the last two items in this table, the status of removal permits and the availability of pipeline space to accommodate an applied-for export, form part of the Part VI Information Filing Requirements. The Board is of the view that when an applicant has complied with these filing requirements, an application has commercial substance. Therefore, the question of the commercial substance of an application should not normally be an issue to be addressed in a public hearing.

The views of submittors and the views of the Board on the proposed changes to the Other Public Interest Considerations are provided in Sections 2.3.1 and 2.3.2 below. However, due to the additional attention given to the manner in which the Board will assess the adequacy of the gas supplies available to licence applicants, this item is addressed separately in Section 2.4.

2.3.1 Views of Submittors

Assurance of Take; Durability of Export Sales Contracts; and Arm's-length Negotiations

The Consumers' Gas Company Ltd. ("Consumers' ") did not oppose the Board's proposal to no longer assess the adequacy of the export market, providing that consideration of these factors was done in the related Part III proceedings (in which the Board hears applications for approval of the construction of new pipeline facilities) or Part IV proceedings (in which the Board hears applications for the approval of new tolls and tariffs). Centra and Union opposed the proposed changes. Centra was of the view that a Part VI finding on the adequacy of the export market is adequate to also serve Part III purposes and that this finding should be made in a Part VI proceeding to prevent duplication of effort. Union expressed the view that the criteria are necessary for Part VI purposes, but indicated that the degree of scrutiny could be less for Part VI applications than is required for Part III purposes.

The Provinces of Ontario and Québec indicated that these criteria should continue to apply to the consideration of Part VI applications. However, these Provinces cautioned the Board that in the event that a decision was taken to eliminate the criteria, the Board should ensure that these same criteria are applied to the Board's consideration of Part III matters. Ontario also pointed out that in order to determine that transportation costs will be recovered over the life of an export sales contract, an assessment of the durability of the supporting contract should continue to be done. The Deputy Minister of Energy and Mines, Manitoba ("Manitoba") suggested that any relaxation of criteria applied to export applications could have implications for Canadian supply security and delivery costs, and could result in shifting responsibility for supply security to the provinces. According to Manitoba, any change in the MBP should not affect the Board's existing responsibilities to ensure that export sales do not have an adverse impact on Canadian consumers. Further, Manitoba stated that modifications to the MBP will require offsetting initiatives by the Board to ensure "....accurate and timely monitoring of the supply/demand situation and outlook; and to ensure that Canadian consumers are not required to unduly subsidize natural gas exports through the tolling regime."

Submissions were received from two of the provinces who were signatories to the 1985 Natural Gas Agreement. Alberta, as represented by the APMC, did not support implementation of the proposed changes at this time. The Province of British Columbia was of the view that the Board should only address extraprovincial concerns.

Although the APMC did not support the proposed changes to the Other Public Interest Considerations at this time, it noted that it supported the Board's proposed changes in principle. The CPA took essentially an identical position. Both these parties stated that, because of the uncertainty for Canadian gas sales to U.S. markets caused by certain U.S. regulatory decisions, the Board should not proceed with its proposed changes at this time.

IPAC was of the view that a review of the sales contract was more appropriately done in a Part III proceeding rather than in a Part VI proceeding.

ProGas was of the view that under a rolled-in tolling scenario, the Board should determine whether export sales contracts are likely to be commercially viable because all toll payers share the risk of the failure of new export sales.

Most of the submissions from other Canadian producers and supply aggregators, and U.S. pipeline and export customers, indicated support for the position that the Board should no longer concern itself about assurances of take, the durability of export contracts, or whether export sales contracts were negotiatied at arm's-length.

Producer Support

There were limited comments addressing the requirement that gas export licence applicants provide a demonstration of producer support. The CPA was of the view that because provincial legislation also requires a finding of producer support, it is not necessary for the Board to make a similar finding. Ontario stated that if the Board continued to assess the overall commercial viability of the export deal, then a finding of producer support was redundant. In general, other submittors were of the view that the Board should continue to require proof of producer support for export arrangements.

Demonstration of Recovery of Transportation Costs

With respect to the requirement to demonstrate recovery of transportation costs in Canada, the majority of submittors who commented were of the view that the Board should continue to ensure that export sales contracts satisfy this criterion. However, IPAC and Paramount were of this view only because of the existence of the U.S. Federal Energy Regulatory Commission's Rule 256, which they considered could impair the ability of Canadian exporters to flow demand charges through to U.S. customers. Certain of the U.S. submittors were opposed to the criterion because thay believed that it violated the Free Trade Agreement and discriminated against U.S. customers. Natural Gas Pipeline Company of America was of the view that the payment of demand charges was a matter for negotiation between the contracting parties.

Assessment of the Appropriate Length of Licence Term

Finally, on the need to make an assessment of the appropriate length of term for an export licence, most submissions focussed on the issue of the adequacy of the supporting gas supply. This matter is dealt with in section 2.4 of these Reasons. On the other aspects of the criterion, IPAC stated that the Board should maintain flexibility and exercise its discretion in order to determine licence term. Husky argued that the term of the export licence should be determined on the basis of the commercial arrangements between buyer and seller, rather than by way of analysis of project-specific supply. Paramount argued that another regulatory body's decision should not influence the Board's consideration in this matter, but rather the Board should have regard to evidence on the market, contracts and supply.

2.3.2 Views of the Board

Assurance of Take; Durability of Export Sales Contracts; and Arm's-length Negotiations

In view of the comments received from parties, the Board will not at this time recommend to the Minister that the criteria dealing with contract flexibility and assurances of take be abandoned.

The Board will continue to have regard to assurances of take, arm's-length negotiations and contract durability.

Producer Support; Transportation Cost Recovery; and Assessment of the Appropriate Length of Licence Term

As indicated in its 14 August 1991 letter, the Board will in its assessment of Part VI applications continue to require proof of producer support and a demonstration that transportation costs in Canada will be recovered.

With respect to the application of the factors contained in the Board's assessment of the appropriate length of term for an export licence, the Board is of the view that evidence on supply, the supporting contractual arrangements and market requirements will be the determinative factors that it will consider in its assessment of licence term.

In summary, the Board has decided to recommend to the Minister that each of the five existing criteria under the Other Public Interest Considerations which relate to the Government of Canada's policy on natural gas exports be retained.

With respect to the sixth criterion in the Other Public Interest Considerations, the determination of the appropriate length of term for an export licence, the Board will consider the factors of supply, sales and transportation contracts, and any other matters that appear to it to be relevant.

2.4 Assessment of the Adequacy of Applicants' Gas Supplies

In its letter to interested parties dated 14 August 1991, the Board reiterated its view, as stated in the GHR-1-87 Reasons for Decision, that it considers full details of the nature of the supply arrangements to be one of the things it examines in determining whether proposed exports are in the national public interest. The Board examines gas supply, in particular project-specific supply, under the Other Public Interest Considerations component of the MBP. Attachment D to the Board's letter pointed out that:

> "in its review of project-specific natural gas supply for Part VI applications, the Board currently examines:
>
> - the contractual arrangements pertaining to natural gas supply in order to assess the extent to which there is a commitment of supply to the proposed export over its term;
>
> - the established reserves and, in some cases, the undiscovered potential supporting the application, as compared to the applied-for volumes in order to assess whether the applicant has sufficient reserves under contract to meet its total requirements over the applied-for licence term;
>
> - the productive capacity supporting the application as compared to the applied-for annual requirements over the term of the proposed export licence, in order to assess whether the available reserves can be produced at a rate sufficient to meet the contractual obligations in each year of the proposed licence term; and
>
> - the status of provincial removal authorizations."

The Board stated that although it has been somewhat flexible with respect to its assessment of the adequacy of project-specific supply, it will normally expect applicants to demonstrate that established reserves equal or exceed the applied-for volume and that productive capacity is adequate to meet the proposed annual export volumes over the majority of the applied-for licence term. The Board went on to say that it will put less weight on productive capacity than on reserves because projections of productive capacity are subject to more uncertainty than estimates of reserves.

2.4.1 Views of Submittors

Comments directed to supply issues were received from 20 of the 40 submittors. Seven submittors made explicit statements of agreement with the Board's handling of supply issues. These submittors included some of the major aggregators and consumer interests - ProGas, Westcoast Energy Inc., Western Gas Marketing Limited ("WGML") Alberta Natural Gas Company Ltd. ("ANG"), Enserch Development Corporation ("Enserch"), Centra and the APMC. Another six submittors agreed with the general direction of the Board's proposals but recommended more flexibility in regard to the level of reserves dedication. This group represented a variety of interests and included British Columbia, Ontario, Pan-Alberta, Paramount, SaskOil and IPAC.

Several submittors, including the CPA, IPAC, Mobil Oil Canada and Pan-Alberta, argued that the Board should not require 100 percent reserves dedication. These parties argued that this requirement imposes a direct cost on Canadian producers through the obligation to carry gas inventories in excess of the quantities which would be reasonably required to fulfill a producer's commitment to a contract. They also argued that, in comparison to their U.S. competitors, their inventory costs were significantly greater due to the higher level of reserves dedication required by the Board.

Pan-Alberta submitted a study by Wright Mansell Research Ltd. ("Wright Mansell") which examined the issue of the additional costs imposed on a producer in a competitive environment by the requirement to dedicate reserves to the licence equal to 100 percent of the licence volume instead of a level determined on the basis of market efficiency. The study concluded that there is a positive relationship between the level of reserves dedication and overall inventory costs, that the longer the lead time involved for booking of reserves, the higher the inventory costs, and that 100 percent reserves dedication results in significantly higher costs than those which would result from efficient inventory management.

The Wright Mansell study also recognized that there were benefits as well as costs associated with the 100 percent reserves dedication policy. These benefits include: facilitating the estimation of the net reserves position given all existing contractual commitments and availability of reserves for anticipated domestic needs; providing a reliable, consistent and centralized information source on reserves and contracts; and providing an independent verification of reserves which assures buyers that the supply estimates are sound. However, the CPA and Husky argued that the verification of reserves, rather than being a benefit, imposes a cost on producers because it provides U.S. purchasers with a benefit that would normally have to be obtained through the contract negotiation process.

The Wright Mansell study suggested that one solution to the reserves dedication problem would be a compromise between the 100 percent requirement and the market solution, something akin to the B.C. reserves dedication policy. The B.C. policy stipulates various levels of reserves dedication depending on the term of the Energy Removal Certificate. In brief, for terms up to

five years, 100 percent reserves are required. For longer terms, B.C. will consider less than 100 percent on a case-by-case basis, with the requirement that the applicant provide evidence that the shortfall has been dedicated to the licence after five years. The minimum level of reserves dedication is 50 percent.

Several submittors commented on the relative balance between the assessment of reserves and the analysis of productive capacity in the context of examining gas supply for export licences. Opinions ranged from support for assessment of both reserves and productive capacity on an equal footing, to assessing reserves alone because the determination of productive capacity is subject to greater uncertainty, and to assessing both reserves and productive capacity but placing a greater emphasis on the assessment of reserves.

A number of submittors raised other issues on supply matters which were beyond the scope of this review. These submissions are summarized in Appendix 2.

2.4.2 Views of the Board

The Board continues to view its examination of the full details of the supply arrangements supporting export licence applications to be an important component of its determinination of whether proposed exports are in the national public interest.

Although the Board normally expects applicants to support export applications both with 100 percent reserves coverage and with productive capacity adequate to cover a majority of the licence term, an examination of the record since the introduction of the MBP reveals that the Board has approved several licences with substantially less than 100 percent reserves dedication.

Between the introduction of the MBP in 1987 and year-end 1991, a total of 68 export licences have been approved and, of these, 25 licences were backed by less than 100 percent reserves with five of those having less than 75 percent. In most cases, projections of productive capacity based on the level of established reserves have not demonstrated that the applicant could fully meet its requirements over the term. As a result of the Board's examination of both reserves and productive capacity, six licences (five of which had less than 100 percent reserves dedication) had their terms abbreviated due to supply considerations. Nineteen applications having an overall shortfall in reserves were approved after review of the applicant's explanation of its strategy for making up the shortfall.

Thus, the record clearly indicates that although the Board normally expects, and usually receives, dedicated reserves which match the volumes applied for, the Board has adopted a flexible approach and, in certain cases, has granted export licences supported by less than full dedicated reserves on the basis of other supporting information. In a minority of cases, the Board has shortened the term of licences on the basis of a shortfall in reserves and productive capacity.

While the Board understands the arguments put forward with respect to the costs imposed on producers by the reserves dedication requirement, the Board does not find these arguments to be sufficiently compelling to change its approach. The Board emphasizes that it has been and will continue to be flexible in exercising its judgement in its assessment of project-specific supply. Nevertheless, the Board will normally expect applicants to demonstrate that established reserves are equal to or exceed the applied-for volume and that productive capacity will be adequate to meet the proposed annual export volumes over the majority of the applied-for licence term.

Chapter 3

Summary: Current Application of the MBP

The Board notes that the structure of the MBP and the underlying rationale behind the MBP remains as stated in the Board's GHR-1-87 Reasons for Decision (see Appendix 1, Attachment F). As stated in that Decision, the MBP consists of both a monitoring component and a public hearing component. The public hearing component is comprised of:

1) the Complaints Procedure;
2) the Export Impact Assessment; and
3) the Other Public Interest Considerations.

These Reasons for Decision address the way in which the Board will apply the Complaints Procedure and the Other Public Interest Considerations. In addition, the Board has included a statement as to some modifications it will implement to the pre-hearing process. For the benefit of all interested parties, this chapter provides a summary restatement of the manner in which the Board will apply the public hearing component of the MBP in light of the decisions in Chapter 2.

1) Complaints Procedure

The Board wishes to clarify that the basic premise of the Complaints Procedure is that, in a market which is working satisfactorily, Canadian purchasers will be able to obtain domestic natural gas supplies on terms and conditions similar to those offered to U.S. purchasers. In order to test whether the market is in fact working in this manner, in the GHR-1-87 Decision the Board stated that:

> "The inclusion of a complaints mechanism in the new surplus determination procedures is based on the principle that gas should not be authorized for export if Canadian users have not had an opportunity to buy gas for their needs on terms and conditions similar to those of the proposed export. Applicants for export licences will have to be prepared to address any concerns on this score which may be identified in the complaints procedure..."

The Complaints Procedure seeks to ensure that Canadian gas buyers who have been active in the market will have access to gas on terms and conditions no less favourable than export customers. The Complaints Procedure will enable these buyers to assess the terms and conditions of the gas sales contracts underlying export licence applications relative to the terms and conditions they are being offered. If the terms and conditions being offered to export customers were more favourable than those available to domestic customers, a Canadian buyer may wish to file a complaint with the Board. The Board will adjudicate each complaint on the basis of an assessment of whether, as a matter of fact, the complainant was or was not able to obtain additional gas supplies on terms and conditions similar to those contained in the gas export licence application submitted to the Board.

Domestic gas purchasers who wish to file a complaint will have to demonstrate that they had attempted to contract for additional gas supplies and that they were not able to obtain such supplies on terms and conditions similar to those contained in the export sales contract. At the same time, export licence applicants will be expected to respond to the concerns expressed by a complainant. If the Board were to find that a complaint was valid, it would then have to determine what action need be taken to remedy the situation. This could involve a delay to the licence proceeding, a denial of the export licence application or some other action appropriate to the circumstances of the particular application.

2) Export Impact Assessment

The rationale behind the Export Impact Assessment ("EIA") component of the MBP remains as stated in the GHR-1-87 Reasons for Decision:

> "The purpose of the impact assessment will be to allow the Board to determine whether a proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices."

The method by which the Board will apply the EIA was not an issue in this proceeding. This method is described in the Board's 1989 Reasons for Decision on the "Proposed Amendment to Export Impact Assessment Filing Requirements." As stated in the Disposition Chapter of that Decision:

> "... the Board will no longer require applicants for gas export licences to file an EIA as part of their application. Rather, the Board will periodically produce an EIA using several projections of exports. The study, which will be prepared in consultation with the natural gas industry and other interested parties, will cover long-term natural gas supply, demand, prices and export levels and will endeavour to provide an adequate statement of assumptions and explanation of the analytical technique used."

The Board is currently reconsidering the process by which it produces an EIA and, in particular, it is considering how it should obtain and incorporate the input of interested parties in publishing an update to its EIA.

3) The Other Public Interest Considerations

In reviewing the merits of an application under Part VI of the Act requesting a licence for the long term export of natural gas from Canada, as part of its assessment of the considerations relevant to the public interest, the Board will normally:

- make an assessment of the likelihood that licensed volumes will be taken;
- make an assessment of the durability of export sales contracts;
- have regard to whether or not export sales contracts were negotiated at arm's-length;
- verify that there is producer support for a gas export application;
- verify that there are provisions in export sales contracts for the payment of the associated transportation charges on Canadian pipelines over the term of the export sales contract; and

- determine the appropriate length of term for an export licence, having regard to:

  (i) evidence on the adequacy of the gas supplies available to the export licence applicant to support the applied-for volumes over the requested licence term;

  (ii) evidence on the necessity of the requested term in light of the terms of the associated gas sales and transportation contracts and the terms of the approvals from other regulatory bodies; and

  (iii) any other evidence which the Board deems to be relevant to the appropriate term of the licence.

In making its assessment as to the adequacy of the gas supplies available to the export licence applicant to support the applied-for volumes over the requested licence term, the Board will continue to be flexible but will normally expect applicants to demonstrate that established reserves are equal to or exceed the applied-for volume and that productive capacity will be adequate to meet the proposed annual export volumes over the majority of the applied-for licence term.

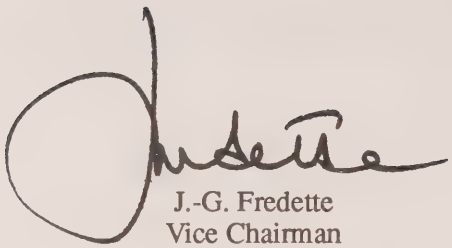
Finally, the Board notes that the above statement on the Other Public Interest Considerations should be interpreted as providing guidance to parties as to which considerations the Board will normally have regard in assessing the merits of gas export licence applications. However, in the context of each specific export licence application, the Board will have regard to whatever factors appear to it to be relevant to the Canadian public interest.

Chapter 4

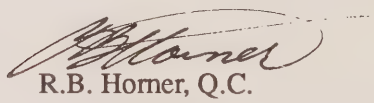
Disposition

The foregoing chapters set forth our Reasons for Decision and our Decision in the matter of the Proposed Changes to the Application of the Market-Based Procedure.

R. Priddle
Chairman

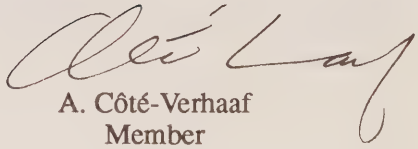


J.-G. Fredette
Vice Chairman



R.B. Horner, Q.C.
Member

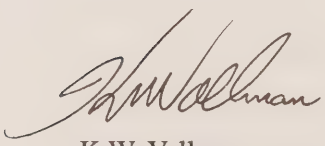
A.B. Gilmour
Member



A. Côté-Verhaaf
Member

C. Bélanger
Member

R. Illing
Member



K.W. Vollman
Member

Appendix 1

File No: 7500-M093-2

14 August 1991

To: All Interested Parties

Re: **Proposed Changes to the Application of the Market-Based Procedure**
Proceeding No. GHW-1-91

In July 1987, pursuant to a "Review of Natural Gas Surplus Determination Procedures" (hearing "GHR-1-87"), the National Energy Board ("the Board") implemented a new procedure, known as the Market-Based Procedure ("MBP"), by which it discharges its responsibilities under section 118 of the *National Energy Board Act* with respect to the licensing of natural gas exports. In the GHR-1-87 Decision, the Board stated that the public hearing component of the MBP would consist of three parts: a Complaints Procedure, an Export Impact Assessment, and a Public Interest Determination. The Board notes that, in making this distinction, the Board intended that the Public Interest Determination would consist of an assessment of all those public interest considerations *other* than those addressed by the Complaints Procedure and the Export Impact Assessment. Therefore, this component of the MBP is referred to as the "Other Public Interest Considerations."

Since the implementation of the MBP, the Board has been adapting the procedure in response to the evolution of natural gas markets. In November 1989, the Board issued an amendment to the Export Impact Assessment filing requirements. This amendment allowed licence applicants to either submit their own Export Impact Assessment, as had been required until that time, or to adopt an Export Impact Assessment prepared by the Board in order to satisfy the requirement that evidence be submitted as to the likely impact of their proposed export on Canadian energy markets.

In March 1990, the Board conducted a "Review of Certain Aspects of the Market-Based Procedure." Pursuant to this review, the Board eliminated the use of benefit-cost analysis in its assessment of the merits of export licence applications. It also changed the way in which it ensures that export contracts fulfill the criterion contained in Clause 18 (iii) of the Agreement Among The Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices ("the 1985 Agreement"); ie. that "export contracts must contain provisions which permit adjustments to reflect changing market conditions over the life of the contract."

In the past few years, a number of parties have raised questions and concerns about the intent and operation of the Complaints Procedure. More recently, in the context of export licence applications, some parties have requested clarification of the role of the Other Public Interest Considerations in the Board's export licensing decisions. Accordingly, as part of its ongoing effort to maintain and improve the clarity and effectiveness of the regulatory process, the Board decided to internally re-assess the manner in which it applies these two components of the MBP, and to then seek the views of interested parties on its proposed modifications.

The MBP incorporates the Government of Canada's policy in regard to the conditions exporters of natural gas must meet for gas exported under licence, as set out in Clause 18 of the 1985 Agreement. Accordingly, on 12 July 1991, the Board wrote to the Minister of Energy, Mines, and Resources, the Honourable Jake Epp, requesting his concurrence that the Board proceed with its intended changes to those aspects of the MBP which reflect the Government of Canada's policy. On 7 August 1991, the Minister wrote back to the Board, indicating his concurrence with the Board's intentions. These letters are attached as Attachments A and B respectively.

The proposed statements on the application of the Complaints Procedure and the Other Public Interest Considerations, which are the result of the Board's internal re-assessment of these two components of the MBP, are attached as Attachments C and D respectively.

The Board is of the view that the Information Filing Requirements to be satisfied by gas export licence applicants should be consistent with the MBP and has therefore decided to seek further comment on the section of its Part VI Regulations which set out such requirements. An extract from the revised draft *National Energy Board Part VI Regulations* ("the draft Part VI Regulations") containing the Information Filing Requirements for gas export licence applicants is attached as Attachment E. These information requirements have been revised in light of the comments received from interested parties on the draft Part VI Regulations which were released by the Board in August 1990. Although these new regulations will not become effective in law until they are approved by the Governor-in-Council, subsection 5(2) of the *National Energy Board Part VI Regulations*, under which the Board currently operates, allows the Board to determine the information required to be filed by an applicant. The Board intends to operate using the Information Filing Requirements set out in Attachment E.

The Board requests that each party who wishes to submit comments on Attachments C, D, and E file 20 copies of its written comments with the Board at the following address by 15 October 1991:

National Energy Board
311-6th Ave. S.W.
Calgary, Alberta
T2P 3H2

All parties are asked to quote Proceeding No. GHW-1-91 and File No. 7500-M093-2 when corresponding with the Board on this matter.

The Board will then make a final determination as to its views on the appropriate application of the MBP. For that part of the Other Public Interest Considerations component of the MBP which relates directly to the Government of Canada's gas export pricing policy, the Board will refer its final recommendations to the Minister of Energy, Mines and Resources.

The Board notes that, in considering the appropriateness of the proposed modifications to the MBP, interested parties may wish to refer to decisions which the Board has rendered on export licence applications since the MBP was implemented. For the convenience of interested parties, copies of the decision chapters from the GHR-1-87 Decision, which implemented the MBP, and the GHW-4-89 Decision, which subsequently modified the MBP, are attached as Attachments F and G respectively.

Yours truly,

Marie Tobin
Secretary

Attachs.

Attachment A

July 12, 1991

File No: 7500-M093-2

The Honourable Jake Epp, P.C., M.P.
Minister of Energy, Mines, and Resources
580 Booth St.
Ottawa, Ontario
K1A 0E4

Dear Mr. Epp:

Proposed Changes to the Market-Based Procedure

I am writing to you concerning proposed changes to the way in which the National Energy Board ("the Board") applies the Market-Based Procedure ("the MBP") to the licensing of natural gas exports. The proposed changes will have implications for the Government of Canada's policy with respect to natural gas export pricing and I am therefore seeking your agreement to proceed with a re-assessment of the application of those aspects of the MBP which are related to this policy.

As you are aware, in July 1987 the Board implemented a new procedure, known as the Market-Based Procedure, by which it discharges its responsibilities under section 118 of the *National Energy Board Act* with respect to the licensing of natural gas exports. The public hearing component of the MBP consists of three parts: a Complaints Procedure, an Export Impact Assessment, and a Public Interest Determination. Since the implementation of the MBP, the Board has been adapting the procedure in response to the evolution of natural gas markets.

In the past few years, a number of parties have raised questions and concerns about the intent and operation of the Complaints Procedure. Further, in the context of public hearings on natural gas export licence applications, some parties have requested clarification of the role of some aspects of the Public Interest Determination in the Board's export licensing decisions. Accordingly, as part of its ongoing effort to maintain and improve the clarity and effectiveness of the regulatory process, the Board has decided to carry out an in-house reassessment of the manner in which it applies these two components of the MBP, and to then seek the views of interested parties, including provincial governments, on the proposed modifications.

The Board notes, however, that some aspects of the Public Interest Determination embody the way in which the Board ensures that the Government of Canada's export pricing policy is adhered to by export licence holders. This policy is set out in Clause 18 of the 31 October 1985 Agreement among the Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices ("the 1985 Agreement") as follows:

i) the price of exported gas must recover its appropriate share of costs incurred;

ii) the price of exported natural gas shall not be less than the price charged to Canadians for similar types of service in the area or zone adjacent to the export point;

iii) export contracts must contain provisions which permit adjustments to reflect changing market conditions over the life of the contract;

iv) exporters must demonstrate that export arrangements provide reasonable assurance that volumes contracted will be taken; and

v) exporters must demonstrate that producers supplying gas for an export project endorse the terms of the export arrangement and any subsequent revisions thereof.

You will recall that one of the main objectives of the 1985 Agreement was to initiate a move from a highly regulated natural gas market to a more market-oriented regime. Since that time, the application of the criteria for acceptability has been modified as the evolution of a competitive market has progressed. For example, in 1986, the previous Minister of Energy, Mines and Resources indicated that the domestic/export price comparison (criterion ii) would be satisfied through "after the fact" monitoring by a committee of federal and provincial officials and that the Board would no longer be expected to ensure that export licence holders adhered to this standard.

Further, in June 1987, the previous Minister wrote to the Board expressing concern about the potential implications of Opinions 256 and 256-A of the U.S Federal Energy Regulatory Commission, and requested the Board to provide him with advice as to whether the contractual arrangements in export arrangements satisfied the criterion with respect to the recovery of the appropriate share of costs incurred (criterion i). The Minister indicated that "costs incurred" should be interpreted to mean that the export price yielded sufficient revenue to recover Canadian transportation costs and to netback a price acceptable to the producers supplying the natural gas, as demonstrated by their support for the arrangement.

As a result of these changes, the Board is currently responsible for ensuring that export licence holders adhere to criteria (i), (iii), (iv) and (v) of the 1985 Agreement. Although there have been modifications to the export pricing criteria since the signing of the 1985 Agreement, these modifications have arguably not kept up to the rapid developments in natural gas markets. The Board notes, for example, that in the past few years, Canadian gas producers have demonstrated considerable skill in designing contracts with unique provisions which satisfy the needs of both gas purchasers and producers. In light of these developments, the Board is of the view that it may no longer be in the public interest to continue to enforce criteria (iii) and (iv).

The Board intends this summer to issue its proposed changes to the way in which it applies the MBP, including its proposal that it no longer require export licence applicants to demonstrate that criteria (iii) and (iv) are satisfied as part of its Public Interest Determination. Upon receiving comments from all interested parties, the Board intends to release a final statement on the application of the MBP before the end of this year.

The Board is requesting your concurrence to proceed with a re-assessment of the application of those aspects of the MBP which are related to the Government of Canada's export pricing policy.

Yours sincerely,

R. Priddle

Attachment B

Mr. Roland Priddle
Chairman
National Energy Board
473 Albert Street
Ottawa, Ontario
K1A OE5

Dear Mr. Priddle:

Thank you for your letter of July 12, 1991 in which you outlined the Board's proposed changes to the application of certain aspects of the Market-Based Procedure. In view of the developments in natural gas contracting practices over the last few years, I consider this action to be both timely and warranted. With respect to those aspects concerning the Government's policy on natural gas export pricing, I concur with the process summarized in your letter.

Since your review encompasses the criteria to be satisfied by holders of natural gas export licences, as set out in the 1985 Agreement on Natural Gas Markets and Prices, I am forwarding a copy of your letter and this response to the Energy Ministers of the provinces of Alberta, British Columbia and Saskatchewan. As signatories to the 1985 Agreement, I believe these provinces should be notified of the proposed changes prior to the Board's notification to the public.

I am also forwarding copies of these letters to the Energy Ministers of Manitoba, Ontario and Quebec. As consumers of large volumes of natural gas, I am sure these provinces will be interested in the proposed changes and I am urging them to participate in the Board's public review process.

As indicated in your letter, it may no longer be in the public interest for the Board to enforce certain of the export criteria contained in the 1985 Agreement.

Specifically, the Board will seek comments on its proposal that it no longer require export licence applicants to satisfy criterion (iii), that "export contracts must contain provisions which permit adjustments to reflect changing market conditions over the life of the contract", nor criterion (iv), that "exporters must demonstrate that export arrangements provide reasonable assurance that volumes contracted will be taken". I am confident that the Board will give due consideration to the views of all interested parties in reaching a decision on this proposal.

I am of the view, however, that the Board should continue to apply criterion (i), that "the price of exported gas must recover its appropriate share of the costs incurred". As long as the U.S. Federal Regulatory Energy Commission's Opinion 256 (disallowing the as-billed pass through of Canadian demand charges) remains in force, I believe it is necessary to apply this criterion. The revenue generated by an export arrangement must be sufficient to cover the intraprovincial and interprovincial transportation costs incurred in Canada. In my view, retention of criterion (i) is especially important at a time when some U.S. interests are seeking to impose new restrictions on imports of Canadian natural gas and effectively broaden the scope and the application of FERC Opinion 256.

In addition, I believe that it is important for the Board to continue to apply criterion (v), that "exporters must demonstrate that producers supplying gas for an export project endorse the terms of the export arrangement and any subsequent revisions thereof". A large portion of the natural

gas exported from Canada is sold from aggregated supply pools. The producers which form the basis of these supply pools should continue to have the right to decide whether they accept any new terms and conditions of the downstream sales arrangement, negotiated on their behalf by an aggregator or shipper.

In view of the ongoing changes in U.S. natural gas markets, there is a possibility that certain existing long-term contractual arrangements will be renegotiated. The continuation of criterion (v) will ensure that any contractual changes will have the support of Canadian gas producers.

I remain confident in the Board's ability to make appropriate decisions in today's market environment, consistent with its statutory obligations. I believe that the thrust of the upcoming review, as outlined in your letter, reflects the changing regulatory requirements for an industry which has adapted to the new competitive realities of the natural gas market.

When the Board has had an opportunity to consider the comments received from all interested parties, please advise me of the Board's final recommendations for changes to the criteria to be satisfied by holders of natural gas export licences.

Yours sincerely,

Jake Epp

c.c.: See attached

The Honourable Rick Orman, M.L.A.
Minister of Energy
Province of Alberta

The Honourable Jack Weisgerber, P.C., M.L.A.
Minister of Energy, Mines and Petroleum
Resources
Province of British Columbia

The Honourable Harold Neufeld, M.L.A.
Minister of Energy and Mines
Province of Manitoba

The Honourable Will Ferguson, M.P.P.
Minister of Energy
Province of Ontario

The Honourable Madame Lise Bacon, M.A.N.
Vice-première ministre, ministre de l'Énergie et
des Ressources et ministre déléguée aux Mines
Gouvernement du Quebec

The Honourable Rick Swenson, M.L.A.
Minister of Energy and Mines
Province of Saskatchewan

Application of the Complaints Procedure

This Attachment provides a statement of the way in which the Board intends to apply the Complaints Procedure and a statement of the pre-hearing process which the Board intends to implement for all future Part VI export licence applications.

I. Application of the Complaints Procedure

In the GHR-1-87 Decision which implemented the Market Based Procedure (MBP), the Board stated that the MBP "is founded on the premise that the marketplace will generally operate in such a way that Canadian requirements for natural gas will be met at fair market prices." The Board also stated that:

> "During public hearings to consider applications for licences to export natural gas, the Board's assessment as to whether the market is functioning in a satisfactory way will consist of three main components:
>
> 1) Complaints Procedure
> 2) Export Impact Assessment
> 3) Public Interest Determination."

Thus, the Complaints Procedure is one way in which the Board tests whether the market is working to satisfy Canadian requirements for natural gas at fair market prices.

The Board wishes to clarify that the basic premise of the Complaints Procedure is that, in a market which is working satisfactorily, Canadian purchasers will be able to obtain domestic natural gas supplies on terms and conditions similar to those offered to U.S. purchasers. In order to test whether the market is in fact working in this manner, in the GHR-1-87 Decision the Board stated that:

> "The inclusion of a complaints mechanism in the new surplus determination procedures is based on the principle that gas should not be authorized for export if Canadian users have not had an opportunity to buy gas for their needs on terms and conditions similar to those of the proposed export. Applicants for export licences will have to be prepared to address any concerns on this score which may be identified in the complaints procedure..."

The Complaints Procedure seeks to ensure that Canadian gas buyers who have been active in the market will have access to gas on terms and conditions no less favourable than export customers. The Complaints Procedure will enable these buyers to assess the terms and conditions of the gas sales contracts underlying export licence applications relative to the terms and conditions they are being offered. If the terms and conditions being offered to export customers were more favourable than those available to domestic customers, a Canadian buyer may wish to file a complaint with the Board. The Board will adjudicate each complaint on the basis of an assessment of whether, as a matter of fact, the complainant was or was not able to obtain additional gas supplies on terms and conditions similar to those contained in the gas export licence application submitted to the Board.

Domestic gas purchasers who wish to file a complaint will have to demonstrate that they had attempted to contract for additional gas supplies and that they were not able to obtain such supplies on terms and conditions similar to those contained in the export sales contract. At the

same time, export licence applicants will be expected to respond to the concerns expressed by a complainant. If the Board were to find that a complaint were valid, it would then have to determine what action need be taken to remedy the situation. This could involve a delay to the licence proceeding, a denial of the export licence application or some other action appropriate to the circumstances of the particular application.

II. Pre-Hearing Process

Some parties have argued that the time available to interested parties between the date they receive notice of a hearing and the commencement of the public hearing is insufficient to determine whether or not they have grounds for a complaint.

The Board understands that domestic gas purchasers must know the terms of the gas sales contracts associated with an export licence application sufficiently in advance of the hearing date to allow them to determine whether they have grounds to complain. Further, the Board believes that it would be in the best interests of both export licence applicants and domestic gas purchasers if adequate time were provided to all parties to resolve any potential complaints prior to the commencement of a public hearing. Accordingly, the Board proposes that the following process be adopted for all future Part VI licence applications.

The Board will require that export licence applicants file a detailed summary of the terms of the gas export sales contract as part of their applications (see Attachment E for the revised Part VI Information Filing Requirements). Among other things, this summary will provide information on the contractual pricing provisions in the export sales contract, including information on the nature of the pricing arrangement, the pricing formula, and an estimate of the contract price at the point of transfer of custody from the seller to the buyer on the date the application is filed. This summary will allow interested parties to assess the application at an early date and help them determine whether they have grounds to file a complaint. Applicants will be required to provide a copy of this summary to any parties that may be specified by the Board and to any party that requests a copy.

Upon the filing of an export licence application, it is the Board's current practice to issue a press release notifying interested parties that the application has been received. The press release provides basic information such as the name of the exporter and importer and the volumes of gas to be exported. This process will be modified to include the name of a contact person who represents the applicant and from whom a copy of the detailed summary may be obtained, and to whom questions about the details of the gas sales contract may be directed. Thus, interested parties will have an opportunity to inform themselves of the terms and conditions of the proposed export at the earliest possible date.

As per current practice, the Board will then review the application to determine whether or not the applicant has satisfied the Board's Part VI Information Filing Requirements. If not, the applicant will be informed of the deficiencies and no further action will be taken on the application until these deficiencies are rectified to the Board's satisfaction. Once the Board is satisfied that an application has fulfilled the filing requirements, it will set the application down for public hearing and issue Directions on Procedure stating the time and location of the hearing, along with a statement of the issues expected to be addressed at the hearing.

The Board will, except in unusual circumstances, provide for a minimum of 60 days between the date the Board announces that a public hearing will be held and the date at which the hearing will commence. If a complaint were filed and not resolved prior to the commencement of the hearing, the Board would hear the arguments of the licence applicant and the complainant at the public hearing.

Attachment D

Application of the Other Public Interest Considerations Component of the MBP

This Attachment first provides a background summary of the considerations to which the Board has had regard to date under the Other Public Interest Considerations component of the MBP. It then provides a statement of the considerations to which the Board proposes to have regard in assessing the merits of gas export licence applications. Finally, it provides a statement of the way in which the Board will assess the adequacy of each applicant's gas supply.

I. Background

In the GHR-1-87 Reasons for Decision (Review of Natural Gas Surplus Determination Procedures, July, 1987), the Board stated that:

> "In addition to using the complaints procedure and export impact assessment outlined above to ascertain that gas proposed to be exported is surplus, the Board will continue, as required by Section 83 of the Act [now Section 118], to have regard to all other factors it considers relevant in determining whether proposed exports are in the national public interest.
>
> "Among factors the Board will consider will be evidence that the gas proposed to be exported is under contract and full details of the nature of the supply and sales arrangements as well as copies of executed contracts; evidence of producers' support for the proposed export; evidence on the status of permits to remove gas from the producing province involved; evidence that export volumes will be taken; evidence that the export revenues will fully recover the costs to Canada incurred in making the export and that the export price will not be less than the price to Canadians for similar service; evidence on the availability of pipeline space, on the need to build additional pipeline and other facilities in Canada and in the importing country, and on the likelihood and timing of Canadian need for any of the facilities constructed in Canada upon termination of the export and the impact of such repatriated use upon the economics of the proposed export; and information on any relevant government policies or positions."

The Board also stated that it "continues to see a role for cost-benefit analysis in assessing any trade-off between security of supply and benefits from exports and in determining whether there are net benefits to Canada." (See Attachment F for a copy of the complete Decision chapter.)

Under cover of a letter dated 18 December 1989, the Board subsequently issued Hearing Order GHW-4-89 requesting written submissions on a number of questions related to the use of benefit-cost analysis for determining whether exports of natural gas are in the public interest. The Board also requested submissions on the question of the extent to which it should "as part of the MBP, examine the provisions of export contracts to determine whether those contracts allow flexibility in order to reflect changing market conditions over time."

In its Reasons for Decision on the GHW-4-89 hearing, the Board decided to discontinue the use of benefit-cost analysis in its gas export licensing procedures. The Board also stated that it would:

> "... continue to examine contracts underlying gas export applications to assure itself that they have commercial substance. It will also take into account whether contracts are likely to be durable over their term. The Board recognizes that there may be cases where

contracts are attractive notwithstanding a lack of flexibility. In implementing the criterion relating to contract flexibility the Board will operate on the presumption that, where contracts are freely negotiated at arm's length they will be in the public as well as the private interest. The Board sees itself intervening in this regard only in exceptional circumstances." (See Attachment G for a copy of the complete Decision chapter.)

In summary, the Other Public Interest Considerations component of the MBP currently consists of the factors listed in the GHR-1-87 Decision, and modified as per the GHW-489 Decision to exclude the use of benefit-cost analysis and to redefine the manner in which the Board would assess the flexibility of export sales contracts. In this context, the concepts of commercial substance, contract durability and arm's-length negotiation of contracts were introduced.

II. Application of the Other Public Interest Considerations

In re-assessing the considerations which it believes to be relevant to the public interest, the Board has been guided by the fundamental premise underlying the MBP stated in the GHR-1-87 Reasons for Decision: ie. that the MBP "is founded on the premise that the marketplace will generally operate in such a way that Canadian requirements for natural gas will be met at fair market prices."

With the above principle in mind, the Board proposes that, in the context of Part VI export licence applications, it no longer have regard to certain factors in its Other Public Interest Considerations. In particular, it will not make an assessment of the likelihood that licensed volumes will be taken, it will not make an assessment of the durability of export sales contracts, and it will not have regard to whether or not the export sales contracts were negotiated at arm's-length. Furthermore, all applications which have satisfied the Part VI Information Filing Requirements will be deemed to have commercial substance. The proposed changes to the Other Public Interest Considerations are summarized in the attached Table 1. The footnotes to Table 1 provide a brief explanation of the reasons why the Board has decided not to have regard to certain factors.

The Other Public Interest Considerations Component of the MBP will henceforth consist of:

I) A verification that there is producer support for a gas export licence application.

2) A verification that there are provisions in the export sales contracts for the payment of the associated transportation charges on Canadian pipelines over the term of the export sales contract.

3) An assessment of the appropriate length of term for an export licence, having regard to:

(i) evidence on the adequacy of the gas supplies available to the export licence applicant to support the applied-for volumes over the requested licence term;

(ii) evidence on the necessity of the requested term in light of the terms of the associated gas sales and transportation contracts and the terms of the approvals from other regulatory bodies; and

(iii) any other evidence which the Board deems to be relevant to the appropriate term of licence.

The way in which the Board will make its assessment of the adequacy of gas supplies as per (i) above is explained in section III below.

The Board notes that the current provisions of the MBP have been developed in the context of the contemporary gas market. Other concerns may arise from time to time in the context of specific applications or in light of changing market circumstances which are not foreseeable at this time. The Board will continue to reassess the appropriateness of the provisions within the MBP as warranted from time to time to reflect any changes in the considerations relevant to the Canadian public interest.

III. Assessment of the Adequacy of Project-Specific Supply

In its review of project-specific natural gas supply for Part VI applications, the Board currently examines:

- the contractual arrangements pertaining to natural gas supply in order to assess the extent to which there is a commitment of supply to the proposed export over its term;
- the established reserves and, in some cases, the undiscovered potential supporting the application, as compared to the applied-for volumes in order to assess whether the applicant has sufficient reserves under contract to meet its total requirements over the applied-for licence term;
- the productive capacity supporting the application as compared to the applied-for annual requirements over the term of the proposed export licence, in order to assess whether the available reserves can be produced at a rate sufficient to meet the contractual obligations in each year of the proposed licence term; and
- the status of provincial removal authorizations.

Although the Board has been somewhat flexible with respect to its assessment of the adequacy of supply in its review of export licence applications since the implementation of the MBP, it has generally sought assurance at the time of issuance of a licence that:

- there is a contractual commitment of supply to the proposed export over its term;
- established reserves meet or exceed the applied-for term volume and annual productive capacity approximates the annual applied-for requirements over the majority of the proposed term or, in the absence of one or both of the foregoing, that provisions are in place which provide the Board with assurance that the required supply will be available; and
- provincial removal authorizations have been applied for or received.

In the course of recent Part VI hearings, a number of concerns have arisen with regard to the manner in which the Board assesses the adequacy of project-specific supply. These concerns relate to:

i) the role of productive capacity versus established reserves as a determinant of the appropriate term of proposed export licences;

ii) the extent to which the Board should rely on other assurances provided by an applicant that the required supply will be available;

iii) the acceptability of corporate supply pools versus dedicated supply; and

iv) contract provisions which may raise doubt as to the degree of supply commitment over the term of the proposed export, e.g., buy-down provisions, termination clauses, and absence of arbitration provisions.

In order that the Board's assessment of the adequacy of project-specific supply be clearly understood, a clarification of how the Board intends to address these concerns is outlined below.

The Board is of the view that assessments of both reserves and productive capacity are necessary to understand an applicant's supply position, but the Board will place greater weight on the assessment of reserves. The Board will normally expect applicants to demonstrate that established reserves equal or exceed the applied-for term volume and that productive capacity is adequate to meet the proposed annual export volumes over the majority of the applied-for licence term.

The Board will put less weight on productive capacity than on reserves because projections of productive capacity are subject to more uncertainty than estimates of reserves. The assumptions which underpin a projection of productive capacity, such as well production capability, number of wells, and gas plant and compression capacity, are subject to increasing uncertainty as one moves further into the future. In addition to the greater uncertainty associated with productive capacity, the Board also recognizes that in cases where the reserves dedicated to a project are equivalent to the applied-for term volume, productive capacity in the latter years of an export licence term will not be adequate to meet annual requirements. Finally, the Board notes that there is usually some prospect that deliveries under contracts will not be at a 100 percent load factor level. These factors, when considered together, warrant the use of a flexible approach by the Board in the determination of the appropriate term of export licences on the basis of productive capacity estimates. However, the Board continues to consider an assessment of productive capacity to be an important component of its project-specific supply analysis and considers it to be particularly relevant in those situations where the estimate of reserves may in itself not be indicative of the production characteristics of a pool over the term of the proposed export licence. This may be the case, for example, when the gas is to be produced from unconventional reservoirs or where gas production is to be deferred.

In cases where established reserves are insufficient to meet applied-for volumes, the Board will be prepared to consider alternative evidence that supply will be available. For example, the Board may be prepared to consider evidence on contractual commitments to develop additional supplies; evidence on corporate warranties that supplies will be available; evidence that a licence is required for a longer term than would be warranted on the basis of the supplies dedicated to the application because of a need to gain or preserve a particular market; or evidence that there are strong financial incentives to the applicant to ensure that supply will be available, including evidence that the applicant will receive an up-front lump sum payment, evidence that the applicant is contractually bound to pay financial penalties for failure to deliver or is contractually bound to pay pipeline demand charges over a long period of time. However, the onus will be on the applicant to persuade the Board that any supply deficiencies will be remedied.

Where an export is being supplied from a corporate supply pool, the Board will examine the basis on which the pool is formed and the other sales commitments to be served from the same supply pool. In these cases, the Board will require that the reserves and productive capacity of

the pool be examined to assess their adequacy in light of the total contracted sales from this supply. Where corporate warranties are used to backstop a supply arrangement, the Board will similarly be concerned about the likely availability of this supply and the contractual commitments to ensure that it will be available.

With respect to the contractual arrangements for project-specific gas supply, the Board will normally expect that there be a contractual commitment of supply over the proposed licence term.

TABLE 1

SUMMARY TABLE OF CHANGES TO THE "OTHER PUBLIC INTEREST CONSIDERATIONS" COMPONENT OF THE MBP

List of Former Other Public Interest Cnnsiderations	List of Current Other Public Interest Considerations	How Applicant is to Demonstrate Criterion is Satisfied
Demonstration of Commercial Substance of an Application	---	Satisfying the Part VI Information Filing Requirements. (1)
Status of Removal Permits Filing Requirements.	---	Forms part of the Part VI Information
Availability of Pipeline Space Filing Requirements.	---	Forms part of the Part VI Information
Demonstration of Producer Support	Demonstration of Producer Support	Filing of evidence of producer support for the terms of the export sales contracts.
Assurances that Transportation Charges on Canadian Pipelines will be Recovered	Assurances that Transportation Charges on Canadian Pipelines will be Recovered(2)	Filing of export sales contracts which contain provisions for the payment of transportation charges on associated Canadian pipeline systems over the life of the sales contracts.
Adequacy of Project Specific Gas Supply	See Criterion with respect to Appropriate Licence Term	---

(1) The commercial substance of a licence application will be satisfied when an Applicant has satisfied the Part VI Information Filing Requirements. Commercial substance will not normally be an issue for discussion at the public hearing.

(2) On 24 June 1987, the then minister of Energy, Marcel Masse wrote to the Board stating that, because of concerns that the U.S. would not pass through transportation charges on Canadian pipelines to purchasers in the U.S. on an "as-billed" basis, he was requesting the Board, as part of its export licensing procedures, to ensure that the price of exported natural gas recover its appropriate share of the costs incurred in Canada. In response, on 27 July 1987 the Board issued an addendum to a Memorandum of Guidance previously released on 14 November 1986, and stated that all applicants would be required to file information which would demonstrate that the "price of exported natural gas must recover its appropriate share of the costs incurred." The Board further stated that this criterion "should be interpreted to mean that the revenue generated by each export licence on an annual basis is sufficient to cover the intraprovincial and interprovincial transportation costs in Canada and to netback a price that is acceptable to the producers supplying the natural gas, as demonstrated by their support for the arrangement." Because concerns about the pass through of Canadian transportation charges to end-purchasers in the U.S. still exist, the Board is of the view that it is appropriate to retain this criterion at this time.

TABLE 1 (Cont'd)

SUMMARY TABLE OF CHANGES TO THE "OTHER PUBLIC INTEREST CONSIDERATIONS" COMPONENT OF THE MBP

List of Former Other Public Interest Cnnsiderations	List of Current Other Public Interest Considerations	How Applicant is to Demonstrate Criterion is Satisfied
---	Appropriate Licence Term	Demonstration of the adequacy of gas reserves and productive capability. Demonstration of a contractual supply commitment over the applied-for licence term. Demonstration of the need for the applied-for term, in light of evidence on the duration of the tenns of the associated gas sales and transportation contracts and on the duration of the terms of approval from other regulatory jurisdictions.
Assurances that Licensed Volumes Will be Taken(3)	---	---
Demonstration of the Durability of Export Sales Contracts(4)	---	---
Demonstration that the Export Sales Contract was Negotiated at Arm's-length(5)	---	---

(3) In the Board's view, the question of whether or not licensed volumes are taken is not relevant to the Board's assessment of the public interest associated with the licensing of gas exports under Part VI of the *National Energy Board Act* ("the Act"). The Board believes that concerns about the potential under-use of pipeline facilities are more appropriately addressed in hearings under Part III of the Act and that any associated concerns about the appropriate distribution of the burden of unpaid demand charges are more appropriately addressed in hearings under Part IV of the *Act*.

(4) In the Board's view, the parties to an export sales contract are in the best position to determine the contractual provisions which best satisfy their particular needs. Moreover, the Board recognizes that even where contracts do not provide for pricing flexibility, they may be attractive to the contracting parties. Except for the pipeline utilization issues noted in (3) above, the durability of gas sales contracts is a private rather than a public interest matter and will not be addressed in Part VI hearings.

(5) The two main concerns about contracts negotiated at non-arm's length are whether one of the parties will receive less than market value in consideration of the goods or services provided, or whether Canada or a province will be deprived of tax revenues normally due to it, because of special intra-corporate pricing arrangements which provide for the shifting of taxable income to countries with more favourable tax treatment. Neither of these concerns fall within the scope of the Board's gas export licensing criteria. The adequacy of the price is a concern of the producer and the resource owner, while taxation matters are the concern of Revenue Canada. Non-arm's length contracts are not necessarily either less advantageous to exporters or less understandable than are contracts negotiated at arm's length. Whether negotiated at arm's length or not, it is the stated terms and conditions, including the pricing arrangements, rather than the legal relationship between the contracting parties, which would form the basis of any complaint by domestic customers about access to Canadian gas on terms and conditions similar to those contained in export sales contracts.

Attachment E

Part VI Information Filing Requirements for Gas Export Licence Applicants

This Attachment contains the revised Part VI Information Filing Requirements for gas export licence applicants.

The Board is of the view that each licence application should be complete to the extent contemplated under these filing requirements before being set down for a public hearing. However, the Board recognizes that in certain instances timing and other constraints can limit an applicant's ability to bring forward finalized documents.

The Board has in the past exercised some degree of flexibility in the enforcement of the filing requirements for export licence applications and, in certain instances, the Board has reviewed applications under Part VI that could be considered to be incomplete in some respects. Where final executed agreements have not been available, the Board has required an explanation of the status of the outstanding material. In certain situations pro forma type agreements have been accepted to provide all parties with a clear understanding of what the final form of the agreements will be and to allow parties to examine the proposed contractual arrangements.

In setting export licence applications down for a public hearing, the Board will continue to require applicants to satisfy the Part VI Information Filing Requirements, with some flexibility being provided as outlined above.

Notwithstanding the provision for some flexibility, because of the role it has in the Complaints Procedure, the Board requires that the export sales contract, or the operative sales arrangement between the buyer and seller, be filed in final and executed form with the export licence application. The Board has, in the past, accepted signed precedent agreements with attached pro forma contracts for the sales contract, but this was done under exceptional circumstances and was not intended to create a precedent for future filings.

Information to be Furnished by An Applicant for a
Licence for the Exportation of Gas

7. (1) Every applicant for a licence for the exportation of gas shall furnish to the Board such information as the Board may require to dispose of the application.

(2) Without restricting the generality of subsection (1), the information required to be furnished by an applicant described in subsection (1) shall, unless the Board is of the opinion that such information is not necessary to dispose of the application, include the information set forth in subsections (3) to (10).

(3) Every applicant for a licence for the exportation of gas shall furnish the Board with the terms of the proposed export licence, which shall include:

(a) its duration;

(b) the maximum daily, annual and total quantities of gas to be exported;

(c) the daily and annual tolerance levels, if required, to accommodate temporary operating conditions; and

(d) the point or points of exportation of the gas from Canada.

(4) Every applicant for a licence for the exportation of gas shall furnish the Board with information concerning the applicant's gas supply supporting the proposed exportation, which shall include:

(a) (i) a summary of the quantities of gas under contract to or owned by the applicant, including daily and annual volumes, reserves and the termination date of such contracts, and

(ii) pro forma contracts for each type of gas purchase contract;

(b) the name and location of each pool, field or area which contributes to the gas supply of the applicant and the applicant's contracted and working interest ownership therein;

(c) (i) an estimate of the reserves of gas in each pool, field or area referred to in paragraph (b), and

(ii) supporting data for each reserve estimate referred to in subparagraph (c)(i);

(d) (i) basic deliverability data for each pool, field or area referred to in paragraph (b), and

(ii) a schedule showing total productive capacity (constrained only by existing and anticipated surface facilities) and a schedule showing how it is planned to produce the quantities of gas from each pool, field or area referred to in paragraph (b) necessary to meet total requirements for the period of the proposed export licence; and

(e) where authorization for the removal of gas is required by a statute of a province or territory, copies of such authorizations or evidence on the status of any applications made in respect of such authorizations.

(5) Every applicant for a licence for the exportation of gas shall furnish the Board with information concerning the applicant's gas markets, which shall include:

(a) details of the applicant's gas sales contract, including

(i) copies of the gas export sales contracts pertaining to the proposed exportation of gas,

(ii) a detailed summary of the terms and conditions of the gas export sales contracts, and

(iii) a summary of the gas sales contracts for the sale of gas in the domestic and export markets which may draw from the same gas supply as the proposed exportation, containing the daily and annual quantities and the termination dates of such contracts;

(b) a description of the export markets to be served by the proposed exportation; and

(c) details on the status of import authorizations required in the country of destination of the proposed gas exportation.

(6) Where the gas proposed to be exported is from a gas supply other than from an exclusively dedicated pool, field or area, an applicant for a licence for the exportation of gas shall furnish to the Board its aggregate gas supply and demand balance for each year of the period of the proposed exportation including a description of the gas supply and the export and domestic contract obligations to be served from it.

(7) Every applicant for a licence for the exportation of gas shall furnish the Board with details of the transportation arrangements pertaining to the proposed exportation of gas, which shall include:

(a) the details and status of all contractual arrangements for the movement of gas in and outside Canada; and

(b) a description of the gathering, storage and transmission facilities, including any new facilities, in and outside Canada required to move the gas to the market destination.

(8) Every applicant for a licence for the exportation of gas shall furnish the Board with information concerning the potential environmental effects of the proposal and the social effects directly related to those environmental effects.

(9) Every applicant for a licence for the exportation of gas shall furnish the Board with details on the status of approvals or authorizations pertaining to transportation services, tariffs and tolls, facilities, environmental and contractual matters necessary for the exportation.

(10) Every applicant for a licence for the exportation of gas shall either:

(a) adopt the Board's published export impact assessment; or

(b) submit an assessment of the impact of their exportation proposal on Canadian energy and gas markets to determine whether the proposed exportation is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices.

(11) Unless otherwise authorized by the Board, all market requirements, reserves and deliverability tabulations shall show gas quantities in cubic metres at a temperature of 15°C and an absolute pressure of 101.325 kPa.

Chapter 4
Decision

In Chapters 2 and 3 the Board has made findings on the continuing appropriateness of the existing surplus determination procedures and on the various alternative procedures suggested by the parties at the hearing.

With respect to the existing procedures, while the R/P Ratio Procedure has merits in some circumstances, it would now be anomalous and contrary to free market operation if the level of gas supply to Canadians were to be determined by other than market forces. For this reason, the Board finds the existing procedures to be no longer appropriate.

For reasons set forth in Chapter 3, the Board finds that the specific alternative procedures suggested by parties to the hearing are not suited to existing circumstances.

The Board has decided that it is appropriate to adopt surplus determination procedures which do not unduly interfere with the market when it is working to serve Canadian needs adequately and fairly, but which will provide for the intervention by the Board whenever it finds that additional exports might cause the market to have difficulty in meeting reasonably foreseeable Canadian requirements.

The Market-Based Procedure

The new procedure, which will be referred to as the Market-Based Procedure, is founded on the premise that the marketplace will generally operate in such a way that Canadian requirements for natural gas will be met at fair market prices.

The Board will act in two ways to ensure that natural gas to be licensed for export is surplus to reasonably foreseeable Canadian requirements: one will be in the context of public hearings to consider applications to export natural gas; the other will be by monitoring Canadian energy markets on an ongoing basis.

A. Public Hearings

During public hearings to consider applications for licences to export natural gas, the Board's assessment as to whether the market is functioning in a satisfactory way will consist of three main components:

1) Complaints Procedure
2) Export Impact Assessment
3) Public Interest Determination

B. Ongoing Monitoring

The Board's ongoing monitoring will consist of two main components:

1) Assessment of Canadian Energy Supply and Demand
2) Natural Gas Market Assessment

Each of these components is detailed below.

A. Public Hearings

The Board is required, by statute, to hold a public hearing on applications to export natural gas for periods longer than two years. Exports for periods not exceeding two years can be authorized by order without need for a public hearing.

Before issuing a licence to export natural gas, the Board is required, by Paragraph 83(a) of the Act, to find that the proposed export is surplus to reasonably foreseeable Canadian needs. The Board will use a complaints procedure to assist it in deciding whether the proposed export is surplus.

1) Complaints Procedure

The inclusion of a complaints mechanism in the new surplus determination procedures is based on the

principle that gas should not be authorized for export if Canadian users have not had an opportunity to buy gas for their needs on terms and conditions similar to those of the proposed export. Applicants for export licences will have to be prepared to address any concerns on this score which may be identified in the complaints procedure which is described below.

When an application for export is filed with the Board, interested parties will have an opportunity to examine the various elements of the proposal. It will be open to domestic users of natural gas to come forward and object to the export on the grounds that they cannot obtain additional supplies of gas under contract on terms and conditions, including price, similar to those in the export proposal. If objections are filed with the Board, the Complainants and the Applicant may attempt to resolve outstanding differences. Indeed, the Board itself may decide not to set down an export application for hearing until parties have been given an opportunity to attempt to cure any complaints.

At the public hearing, the Board will consider the merits of the application together with any outstanding complaints. The Board will hear evidence from all affected parties on relevant matters including information on the efforts of Complainants to contract for gas and on the ability and willingness of Applicants to meet the needs of the Complainants. Much might hinge on the equivalence of the contractual terms in the export arrangement and those sought by the Complainants. It is unlikely these terms will be identical in every respect and, in determining whether terms and conditions are similar, the Board will have regard, in particular, to any differences in the costs to an Applicant of selling to the export customer as compared to selling to the Complainants.

If after completion of the public hearing there are no outstanding complaints which the Board finds to be valid, the Board may conclude, subject to the results of the export impact assessment (see (2)), that the Canadian market is adequately supplied and may determine that the proposed export is surplus to reasonably foreseeable Canadian requirements. If, on the other hand, outstanding valid complaints of Canadian users have not been resolved, the Board may either deny the application or defer issuing a final decision on it until a further opportunity has been given for the situation to be rectified.

2) Export Impact Assessment

Applicants for licences to export natural gas will be required to submit an assessment of the impact of their export proposal on Canadian energy and natural gas markets. This impact assessment will be considered at the public hearing convened to examine the application.

The purpose of the impact assessment will be to allow the Board to determine whether a proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices.

The nature of the export impact assessment, whether quantitative or qualitative, will depend upon the size and significance of the proposed export. The extent and detail of the analysis should be commensurate with the size of the proposed export.

In dealing with the ability of the Canadian gas producing sector to satisfy Canadian needs, given the proposed export, Applicants will be expected to analyze the relevant geological, engineering, economic and institutional factors influencing gas supply. These factors may include the following: exploration and development costs; levels of drilling activity; the trend in reserves additions relative to drilling effort; the size, location and potential production characteristics of gas pools; transportation requirements from wellhead to market and the feasibility of any new transportation facilities required.

In addressing any need for Canadian gas users to adjust their energy consumption patterns by means of energy conservation or switching to alternative fuels, Applicants will be expected to assess the following factors: the scope for additional conservation; the price of gas relative to other energy forms; the fuelswitching capability of Canadian gas users; and any lags in conservation and fuel-switching and the expected costs involved.

Applicants will also be expected to address the impact of their proposed exports on future natural gas prices. Given the uncertainty associated with future values of key factors underlying natural gas supply and demand, such as world oil prices, Applicants will be expected to do the impact assessment using a reasonable range of values for those factors.

The burden of proof will rest with the Applicant to satisfy the Board that the proposed export is surplus. The hearing process will provide all parties with an opportunity to test the Applicant's evidence and to present evidence supporting or opposing the export proposal.

3) Public Interest Determination

In addition to using the complaints procedure and export impact assessment outlined above to ascertain that gas proposed to be exported is surplus, the Board will continue, as required by Section 83 of the Act, to have regard to all other factors it considers relevant in determining whether proposed exports are in the national public interest.

Among factors the Board will consider will be evidence that the gas proposed to be exported is under contract and full details of the nature of the supply and sales arrangements as well as copies of executed contracts; evidence of producers' support for the proposed export; evidence on the status of permits to remove gas from the producing province involved; evidence that export volumes will be taken; evidence that the export revenues will fully recover the costs to Canada incurred in making the export and that the export price will not be less than the price to Canadians for similar service; evidence on the availability of pipeline space, on the need to build additional pipeline and other facilities in Canada and in the importing country, and on the likelihood and timing of Canadian need for any of the facilities constructed in Canada upon termination of the export and the impact of such repatriated use upon the economics of the proposed export; and information on any relevant government policies or positions.

This listing of factors the Board may regard as relevant is illustrative rather than exhaustive. It is intended to indicate the kind of matters the Board will consider in assessing whether the export proposal is in the national public interest. The onus will be on the Applicant to so persuade the Board.

As stated in its April 1986 Report, the Board continues to see a role for cost-benefit analysis in assessing any trade-off between security of supply and benefits from export and in determining whether there are net benefits to Canada. Thus, cost-benefit analysis will continue to be an important tool of the Board in assuring itself that proposed exports are in the public interest.

B. Ongoing Monitoring

1) Assessment of Canadian Energy Supply and Demand

The Board will monitor Canadian energy markets so as to be alert to any difficulties for Canadians in adjusting to changes in natural gas supply and demand.

The NEB Act requires the Board to keep under review the outlook for Canadian supply of all major energy commodities, including electricity, oil and natural gas and their by-products and the demand for Canadian energy in Canada and abroad. As part of this function the Board, since its inception, has prepared and maintained forecasts of energy supply and demand and has, from time to time, published related reports after obtaining the views of provincial governments, industry and other interested parties. The latest of these reports, dated October 1986, was issued in December 1986. The Board intends that this study be updated in 1988. Such assessments will continue to be produced and published at intervals of approximately two years.

Among matters to be analyzed will be the evolving shares of the energy market served by the various energy forms and the implications for the adjustment of the natural gas market in light of the market-oriented pricing regime.

2) Natural Gas Market Assessment

As a second part of its ongoing monitoring, the Board will analyse natural gas supply, demand and prices and will periodically publish reports on its findings.

The focus of these reports will be narrower and shorter-term than that of the above-mentioned total energy reports. A detailed assessment of the structure and functioning of natural gas markets will be provided. There will be coverage of recent developments and near-term prospects for natural gas markets and comments on competitive activity in the market, on pipeline utilization for Canadian and export purposes and on the quantity and quality of gas supply.

Concluding Observations

The Board makes the following observations with respect to its new Market-Based Procedure for surplus determination:

1) It is, in the Board's view, the only procedure which is fully compatible with market-determined pricing. The setting aside of any predetermined amount of gas reserves by means of a surplus formula cannot help but interfere with the proper functioning of the market. In discharging its regulatory responsibilities, the Board is conscious of the need to encourage, rather than impede, the proper functioning of energy markets.

2) The Board's new Market-Based Procedure is not any less certain than its previous RIP Ratio Procedure. While a formula approach of any sort gives an aura of precision to the determination of surplus, it relies heavily on the ability to forecast accurately a large number of variables on both the supply and demand side of the equation.

3) While the Board has found that the setting of guidelines or standards at the national level for the length of distributors' contracts is undesirable or beyond its mandate, this does not imply a judgment by the Board as to the desirability or otherwise of provincial authorities taking positions as to the lengths of contract they believe prudent for their gas users.

4) The Board believes there are safeguards against extraordinary demands being suddenly placed on Canadian supply by the export market. Chief among these safeguards are the limitations imposed by existing pipeline capacity, and the time needed for public hearings of applications to export gas or to construct additional pipeline facilities in Canada or the United States.

5) The Board does not see the need for a period of transition to its new procedures. However, as is usually the case, the Board will evaluate the merits of any intervenor's request for additional time to prepare itself for dealing with an application.

Chapter 3
Decision

The public hearing component of the Board's Market-Based Procedure contains three categories of factors which the Board examines in determining whether to grant a licence for the export of natural gas. The first two categories, the Complaints Procedure and the Export Impact Assessment, are designed to assist the Board in determining, pursuant to paragraph 118(a) of the Act, whether proposed exports are surplus to Canadian needs. The third category, namely public interest determination, is intended to include all other factors which, in the opening words of Section 118 of the NEB Act, the Board considers relevant in determining whether proposed exports are in the national public interest.

Among the factors included in the third category is whether net benefits to Canada would likely result from the proposed export. In its Reasons for Decision describing the MBP the Board indicated that it would assess the net benefits to Canada using benefit-cost analysis. The Board wishes to emphasize that benefit-cost analysis is not related to the determination of quantities of gas which are surplus to reasonably foreseeable requirements for use in Canada.

The Board's use of benefit-cost analysis predates the implementation of the MBP. Since the late 1970's, the Board has used benefit-cost analysis, adapted over time to reflect changing circumstances, to test whether the benefits from gas exports exceed their social costs. This analysis compares a stream of forecast revenues with a stream of forecast costs, both expressed in present value terms.

In the case of gas exports, any difference between private and public evaluations of net benefits relate primarily to gas production costs and transportation costs. Of these two factors, gas production costs usually have a preponderant impact on the outcome of the analysis.

There is much uncertainty about the existence and size of any difference between the social evaluation of production costs and the private evaluation of these costs. This uncertainty relates particularly to the appropriate values of the discount rates and the level and shape of the gas supply curves used in the respective evaluations.

To the extent that any difference exists between social and private estimates of gas supply costs, the producing provinces do have in place mechanisms to capture rents available from the sale of gas by means of royalty and lease-bidding mechanisms. These may be regarded as means to account for at least part of any difference between private and social production costs.

The Board observes that because the existence and size of the discrepancy between social production costs and private costs of the gas is very uncertain, it is not sufficiently clear that there is any difference which the market has failed to take into account, rendering questionable the usefulness of a social analysis in respect of the production cost of gas. Further, the Board notes that, as applied to the calculation of the value of total incremental production costs, benefit-cost results tend to fluctuate widely, depending on the assumptions and forecasts used. These observations are particularly significant in the current policy environment which relies on market forces to determine how gas will be bought and sold.

In view of the above factors the Board concludes that it is not appropriate to use benefit-cost analysis as a determinative factor in gas export licensing.

The Board has considered whether to retain benefitcost analysis as a means of export monitoring or for information purposes. Given all of the limitations outlined above, the Board doubts whether its retention for monitoring or information purposes would be worth the costs imposed on applicants.

In view of the foregoing, the Board has decided not to use benefit-cost analysis in its gas export licensing procedures and will henceforth not require applicants for licences pursuant to Part VI of the Act to provide evidence on the net social benefits of their projects. The Board notes that this decision is confined to the use of benefit-cost analysis in Part VI proceedings. Furthermore, the Board is satisfied that it can fulfill its mandate under Section 118 of the Act and can find proposed exports to be in the public interest without using benefit-cost analysis to assess export applications. As required by section 118, the Board will continue to have regard to all considerations which appear to it to be relevant in determining whether proposed exports are in the national public interest.

The Board, however, recognizes there is one circumstance in which private costs may differ from social costs, namely in pipeline transportation when the principle of rolled-in tolling is applied. Where the cost of providing increments to gas transmission service differs from the average cost of that service, which may often be the case, the incremental users of the expanded system, paying a rolled-in toll, are clearly not being charged with the relevant social costs. If this were to become an issue in the context of Part III or Part IV proceedings it could be addressed by an economic evaluation of pipeline facilities applied for pursuant to Part III of the Act or by consideration of pipeline toll methodology in Part IV.

The Board will continue to examine contracts underlying gas export applications to assure itself that they have commercial substance. It will also take into account whether contracts are likely to be durable over their term. The Board recognizes that there may be cases where contracts are attractive notwithstanding a lack of flexibility. In implementing the criterion relating to contract flexibility the Board will operate on the presumption that, where contracts are freely negotiated at arm's length, they will be in the public as well as the private interest. The Board sees itself intervening in this regard only in exceptional circumstances.

Summary of Other Comments Submitted by Interested Parties

As noted in these Reasons, a number of interested parties to this proceeding filed submissions with the Board on matters which fell outside the scope of the proceeding. Although the Board is not commenting on these submissions, the content of these submissions is summarized in this Appendix. These comments fall into four categories: (1) comments on the Complaints Procedure; (2) comments on the Board's assessment of the adequacy of licence applicants' gas supplies; (3) comments on the hearing process; and (4) comments on duplication between federal and provincial regulatory review processes.

1) Comments on the Complaints Procedure

A number of parties, including the CPA, Husky, IPAC, Mobil, North Canadian Marketing Inc. ("NCM"), Paramount and the Alberta Energy Company ("AEC"), recommended that the Board abandon the Complaints Procedure. The arguments made by these parties can be summarized as follows.

- The Complaints Procedure is incompatible with the workings of a competitive market in which contracts are freely negotiated between parties. In a competitive market, parties would not have to reveal the terms of their privately negotiated contracts to third parties.
- The Complaints Procedure amounts to a right of first refusal for domestic gas buyers, which is incompatible with the functioning of a competitive market.
- The existence of the Complaints Procedure reduces the incentive for domestic buyers to negotiate in good faith with domestic sellers of natural gas.
- The fact that a complaint may be filed introduces uncertainty into the negotiation of an export contract and puts an exporter at a competitive disadvantage against a US seller who is competing for the same market.
- The Complaints Procedure is unfair because it imposes costs on exporters with no offsetting opportunity for exporters to complain that they have not had an opportunity to sell gas to a domestic buyer who enters into an import contract.
- The evidence over the past years indicates that the domestic gas market is functioning in a competitive fashion, so there is no need to retain the Complaints Procedure.

Husky and Paramount argued that, in the event the Board retains the Complaints Procedure, changes should be implemented that would, in their view, make the procedure fairer to producers.

Enserch and ProGas also argued for modifications to make the Complaints Procedure fairer to producers. The common theme in the arguments of these parties was that producers are required to disclose the terms of their contracts, while there are no offsetting obligations on domestic gas buyers.

Husky suggested that the Complaints Procedure be restructured as follows.

(i) Public notice of an export licence application.

(ii) Any Canadian buyer interested in buying gas would negotiate with the applicant towards a sales agreement.

(iii) If a sales agreement cannot be reached with the applicant or another seller, the Canadian buyer could file a complaint with the Board.

(iv) The Board determines if there is a basis for a complaint (ie. whether the buyer was really prepared to buy gas) and, if so, the Board could conduct a hearing. In the absence of the filing of a complaint, there would be no hearing.

(v) If the Board determined that the complaint were valid, it could deny the export licence application.

Paramount suggested that the Board implement a Complaints Procedure which would allow domestic sellers to complain about the terms of import contracts into which domestic buyers enter. Paramount also suggested that complainants should be required to demonstrate that they had attempted to satisfy their gas requirements from U.S. suppliers, as well as Canadian suppliers, before a complaint could be judged to be valid.

On the other hand, a number of parties representing domestic gas consuming interests argued that the Complaints Procedure needs to be strengthened because it is, in their view, inadequate to protect the interests of domestic gas consumers.

Centra, Consumers', Union, Ontario and Québec argued that the Complaints Procedure as currently structured is ineffective for the following reasons.

- Small domestic gas buyers lack the resources to file a complaint with the Board.
- Domestic industrial buyers buy gas on a short-term basis and are therefore not in a position to file complaints about long-term gas export licence applications.
- Increasing volumes of natural gas are exported under short-term order and these volumes are not subject to the Complaints Procedure.
- Amendments to long-term export licence contracts are not subject to the Complaints Procedure.
- If domestic consumers were to avail themselves of the opportunity to use the Complaints Procedure, they would have to model their contracts on the basis of export contracts. Thus, the Complaints Procedure forces U.S. contracting practices onto domestic buyers.
- The Complaints Procedure requires domestic gas buyers to maintain an unreasonable level of surveillance of export applications.

- The term "similar terms and conditions" is so undefined at present that it is unlikely that a complaint could ever be determined to be valid and, if the Board judged that a complaint were valid, the result would likely be litigation.

In view of the above perceived deficiencies in the Complaints Procedure, Centra, Ontario and Québec recommended that application of the Complaints Procedure needs to be broadened to include short-term export orders and renegotiation of long-term contracts. With respect to short-term orders, the Board would post the prices under which these sales proceeded and a complaint could be lodged "after the fact."

Consumers' and Union took the position that the problems with the Complaints Procedure are so serious that it is unworkable and did not suggest any modifications. Consumers', Union and Centra noted that the Board uses the Complaints Procedure and the EIA to satisfy itself that proposed gas exports are surplus to reasonably foreseeable future Canadian needs. Given the weaknesses which they see in the Complaints Procedure, they argued that there is a need to augment it with a strengthened EIA. Consumers' stated that "the EIA is the only forward-looking and potentially workable surplus-related component of the MBP." These three parties recommended that the EIA process be modified in order to provide an opportunity for public input into the EIA. This would likely entail publication of a draft EIA by Board staff, followed by a technical conference in which all interested parties could provide input. A final EIA would subsequently be published by the Board.

2) Comments on the Board's Review of the Adequacy of an Applicant's Gas Supply

(i) Abandon the Examination of Project-Specific Supply

Several parties, most of whom were producers, recommended that the Board completely abandon its review of project-specific supply. These parties included the CPA, AEC, Husky, Mobil, Poco, Brymore Energy Ltd. and NCM.

Their arguments in brief were that: (i) the review of project-specific supply benefits U.S. buyers by reducing the buyer's risk pertaining to reserves, while the costs of carrying excess reserves are borne by Canadian producers; (ii) the Board's review process duplicates the provincial review process and hence is unnecessary and also adds additional costs; (iii) the only impact of the Board's review is to set the appropriate term of the export licence, and this is not necessary since the appropriate term of the licence is determined by the buyer and seller through contract negotiations; and (iv) some of the submittors suggested that the Board should focus on overall monitoring of supply/demand balances rather than on project-specific supply analysis.

(ii) Pre-Approval of Supply Portfolio

Paramount suggested a procedure whereby an applicant could obtain pre-approval of reserves and productive capacity prior to applying for an export licence. The objective of this pre-approval was to give the applicant assurance to proceed with contract negotiations knowing that the supply had been approved by the Board.

(iii) Development of an Ongoing Supply/Demand Balance for Canadian Natural Gas

A suggestion was put forward by Centra for Board consideration whereby the Board would develop and maintain an ongoing supply/demand balance for Canadian natural gas in a North

American context. Under this scheme, the Board would judge each export application against this supply/demand balance to determine whether the proposed export would be surplus to foreseeable requirements for use in Canada. Centra pointed out that the advantages of this scheme are that it would provide an early warning device for both the producing and consuming sectors of the industry, signalling to producers the appropriate time to undertake exploration for new supplies, and signalling to consumers when it would be prudent to contract for longer term supplies.

(iv) Establishment of a Reserves Committee

Paramount suggested that the Board foster the creation of a regulatory/industry reserves assessment committee to look into the development and understanding of the complex issues of reserves assessment.

3) Comments on the Hearing Process

A number of producer interests, including the CPA, IPAC, Husky, Mobil and WGML, argued that an oral public hearing should only be held in cases where complaints had been filed and were unresolved prior to a hearing. These parties argued that hearings are costly and that in many cases there are no substantive issues to be resolved at an oral hearing. WGML argued that the Board can satisfy its mandate under the Act through a written hearing process.

4) Elimination of Duplication Between Federal and Provincial Reviews

The Province of British Columbia urged the Board to minimize duplication between federal and provincial review processes. It suggested that federal regulation of natural gas should conform more closely with federal government policy with respect to the division of responsibility between the federal government and provincial governments with respect to electricity. It also suggested that the Board involve itself in provincial review processes to avoid duplication of effort. Finally, it recommended that the Board limit its regulatory oversight to those matters which could have an impact on parties outside the province from which an application was being made.

Several submittors, including the CPA, Mobil, Husky and AEC, made the point that there is excessive duplication between the review process of provincial agencies and the Board. They argued that similar, if not identical, technical information was required, and that fulfilling the requirements of the two processes was very time-consuming and costly.

Standard Format for Gas Export Sales Contract Summaries

This appendix provides a "standard format" which should be adhered to by all export licence applicants when filing a summary of the contract terms and conditions as part of their export licence applications.

While the contract summary is expected to accurately reflect the basic terms of the export sales agreement, interested parties are directed to consult the entire agreement to ascertain the specific terms which govern the agreement.

The following listing of terms to be included in the contract summary represent the more common terms that are part of export sales agreements. In the event that the applicant's sales agreement contains terms not included herein, but which are considered to be of significance, the applicant is expected to include such terms in the summary.

Contract Summary

1. Canadian Seller:

- Include the full corporate name.

2. U.S. Buyer:

- Include the full corporate name.

3. Third-party Re-sale Agreements:

- Does the third-party re-sale agreement mirror the international export sales contract or vice versa.
- If not, include a summary of the third-party re-sale agreement.

4. Conditions Precedent:

- If applicable, provide the various conditions precedent including the dates by which the conditions must be met.

5. Term:

- Length of initial contract term.
- Commencement date.
- Expiry date.
- Renewal and/or termination rights.

6. Delivery Point:

- Point at which the Canadian seller sells to the U.S. buyer.
- Point at which the gas crosses the international boundary if different from above.

7. Contract Quantity:

- Provide in both metric and imperial units.
- Maximum daily quantity. ("MDQ")
- Daily contract quantity. ("DCQ")
- Monthly contract quantity. ("MCQ")
- Annual contract quantity. ("ACQ")
- Summer/Winter Quantities.
- Rights to increase or decrease contract quantity.

8. Pricing Provisions:

- Provide in dollars and units included in the contract.
- Provide a general description of the pricing provisions. For example, a two-part price consisting of a demand charge and a commodity charge.
- Demand Charge: Provide a description of the various components of the demand charge; payment provisions; adjustment provisions; and, associated renegotiation and or arbitration provisions.
- Commodity Charge: Provide a description of the commodity charge including: the base or reference price; pricing indices; fuel costs; Gas Inventory Charge ("GIC"); reservation or stand-by fees; provision for multi-tier or incentive prices; and, associated renegotiation and or arbitration provisions.
- Other pricing provisions not included above.

9. Take Provisions:

- Seller's obligations including a description of monetary or volumetric penalties for non-performance; provision for alternate sales rights; and, associated renegotiation and/or arbitration provisions.
- Buyer's obligations including provision for minimum daily, monthly, seasonal or annual takes; pro-rata take provisions; volumetric reduction provisions; minimum bill provisions; associated make-up rights; and associated renegotiation and or arbitration provisions.

10. Supply Security:

- Requirement on the part of the seller to provide audited financial statements and regular reports on reserve and deliverability data.

11. Force Majeure:

- Force majeure relief available to seller and buyer.

Appendix 4

Abbreviations

the Act	National Energy Board Act
AEC	AEC Oil and Gas Company, a division of Alberta Energy Company Ltd.
The 1985 Natural Gas Agreement	Agreement Among the Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices
ANG	Alberta Natural Gas Company Ltd.
APMC	Alberta Petroleum Marketing Commission
B.C. Gas	B.C. Gas Inc.
the Board	National Energy Board
British Columbia	Ministry of Energy, Mines and Petroleum Resources for the Province of British Columbia
Centra	Centra Gas (Ontario) Inc.
Consumers'	The Consumers' Gas Company Ltd.
CPA	Canadian Petroleum Association
EIA	Export Impact Assessment
Enserch	Enserch Development Corporation
Husky	Husky Oil Operations Ltd.
IPAC	Independent Petroleum Association of Canada
Manitoba	The Ministry of Energy and Mines for the Province of Manitoba
MBP	Market-Based Procedure
Minister	Minister of Energy, Mines and Resources, Canada
Mobil	Mobil Oil Canada
NEB	National Energy Board
NCM	North Canadian Marketing

Ontario	Ministry of Energy for the Province of Ontario
Pan-Alberta	Pan-Alberta Gas Ltd.
Paramount	Paramount Resources Ltd.
the Part VI Regulations	National Energy Board Part VI Regulations
PGT	Pacific Gas Transmission Company
Poco	Poco Petroleums Ltd.
ProGas	ProGas Limited
Québec	Procureur Général for the Province of Québec
SaskOil	Saskatchewan Oil and Gas Corporation
Union	Union Gas Limited
U.S.	United States of America
Vermont Gas	Vermont Gas Systems, Inc.
Westcoast	Westcoast Energy Inc.
WGML	Western Gas Marketing Limited
Wright Mansell	Wright Mansell Research Ltd.